S. HRG. 102-141

REAL ESTATE DISPOSITION ACTIVITIES OF THE RESOLUTION TRUST CORPORATION

HEARING

BEFORE THE

SUBCOMMITTEE ON CONSUMER AND REGULATORY AFFAIRS

OF THE

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS UNITED STATES SENATE

ONE HUNDRED SECOND CONGRESS

FIRST SESSION

ON

VARIOUS AREAS RELATING TO THE RTC'S POLICIES AND PRACTICES IN ITS ATTEMPT TO DISPOSE OF ACQUIRED REAL ESTATE ASSETS, INCLUDING BUT NOT LIMITED TO HOW THE RTC MIGHT IMPROVE ITS PERFORMANCE IN VARIOUS CRITICAL AREAS, CONSISTENCY OF RTC POLICIES, ADEQUACY OF RTC'S INFORMATION SYSTEM, RTC'S RESPONSIVENESS TO PARTIES DEALING WITH THE AGENCY, EFFECTIVENESS OF RTC'S PERSONNEL, RTC'S PRICING POLICIES INCLUDING SELLER FINANCING RULES, APPRAISAL POLICIES, AND THE RTC'S HANDLING OF PERFORMING LOANS

JUNE 19, 1991

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REAL ESTATE DISPOSITION ACTIVITIES OF THE RTC

WEDNESDAY, JUNE 19, 1991

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
SUBCOMMITTEE ON CONSUMER AND REGULATORY AFFAIRS,
Washington, DC.

The subcommittee met at 10 a.m., in room SD–538 of the Dirksen Senate Office Building, Senator Alan J. Dixon (chairman of the subcommittee) presiding.

OPENING STATEMENT OF SENATOR DIXON

Senator DIXON. We will bring the subcommittee to order.

Let me tell you all a little bit concerning our situation here so you will understand what is transpiring from time to time.

We are, as you can see, in session as of this very moment. We are on the highway bill, which we are at least kind of temporarily married to in this place. And we are going to have some rollcalls this morning. I don't know how many. One is scheduled at 10:15. And you can be assured it won't start that quickly.

But sometime in the very early timeframe here, we're going to have at least one interruption. I have asked staff to talk to my subcommittee colleagues to see if some can get by here this morning for brief periods at least. If that occurs, what we will do is just continue to go and kind of stagger our leaving and returning to the subcommittee so that we can go to the floor to vote. I hope to be able to do that.

If that does not develop and I cannot do that, then you will all just have to excuse the Chair when I see it is time to go vote and I will return as quickly as I can. It takes about 10 minutes to run over there and vote and get back and so forth, so I hope you will all understand the problems that we have here in view of the fact that we are meeting at a time when the Senate is in session.

The subject of today's hearing is the Resolution Trust Corporation's disposition of real estate assets. Thrift failures throughout this country have placed billions of dollars of assets, securities, mortgages, other loans and real estate in the RTC's inventory. Unfortunately, the RTC's real estate inventory which consists of commercial property, land, and single family homes is still growing rather than being sold off.

From many quarters of both the public and private sector, we hear that the RTC is failing in its mission. The facts speak for

themselves. Of all forms of RTC assets, the disposition of real estate has met with a notable lack of success.

The RTC owns $18 billion of real estate, having only managed to sell $5 billion worth through all of its combined sales activities. A recessionary economy coupled with depressed real estate markets clearly impacts upon asset sales. We realize this. Yet it appears that mismanagement rather than a difficult market may be the primary culprit.

Last Tuesday the Senate Banking Committee heard from Charles Bowsher, Comptroller General of the United States. Mr. Bowsher offered a number of criticisms of RTC's functions, although he noted new pricing and seller financing policies. Nothing indicates that the RTC is selling more assets.

GAO's testimony differs little from a warning Mr. Bowsher gave 4 months ago when he testified before the House Banking Committee and described the RTC's real estate asset disposition activities as disappointing.

Well, I must say it is more than disappointing when the RTC has been in business for almost 2 years and it still cannot provide information regarding properties that it holds. It is more than disappointing when this organization, despite its size, cannot efficiently manage its operations. And it is more than disappointing that the RTC Oversight Board which was conceived, structured, and staffed by this administration apparently does not provide proper ongoing oversight of the RTC.

Well I want to thank the witnesses who are here to testify. Chairman Seidman is scheduled to testify before the full committee Friday. The Oversight Board will be here next week. You can be sure that I will raise at those hearings some of the concerns discussed at this hearing.

I hope that, through today's hearing, we can find out what is not working so that the administration and the Congress, the Oversight Board and the RTC can soon correct the problems. For the hundreds of billions of dollars this is costing taxpayers, we owe, I think, at least that to the American people.

Panel one, Philip Searle, Chairman of the National Advisory Board to the RTC Oversight Board, Naples, FL, Donald W. Crocker, president and CEO of the J.E. Roberts Co. of Alexandria, VA, Mike Cannon, AREEA, Inc., Miami, FL, R. Miller Hicks and Cecilia Burke representing CURED, Citizens United for Responsible Economic Development, in Austin, a nonpartisan diverse group of businesspeople troubled about financial institutions. There is a future in CURED, it looks like, in this country right now. I would congratulate you on organizing that group.

We will hear first from Mr. Searle.

Let me say that I took this book home last night. I read it all. I know what your testimony is essentially. We have to have a time limit, and I hope you understand that, to get these things moving along. And we really develop most of the information in the Q. and A. I am indebted to you for your testimony, even the scorecards and the graphs and everything else in the record.

Mr. Searle, if you will proceed, we would appreciate it.

STATEMENT OF PHILIP SEARLE, CHAIRMAN OF THE NATIONAL ADVISORY BOARD TO THE RTC OVERSIGHT BOARD, NAPLES, FL

Mr. SEARLE. Thank you, Mr. Chairman.

I am pleased to be here today to comment upon the real estate sales activities of the Resolution Trust Corporation. My views are those of a private citizen and are not necessarily those of any governmental or nongovernmental entity, including the National Advisory Board to the Oversight Board for the RTC, of which I am Chairman.

Despite my appearance here today as a private citizen, my views nonetheless are strongly influenced by my service as Chairman to the National Advisory Board, as well as by more than 40 years of experience as a commercial banker, 25 years of which were as a chief executive officer. That experience was divided almost equally by early experience in community banking followed by senior management positions in large multibank holding companies.

There are six regional advisory boards that meet quarterly. The fourth series of these meetings is underway. Meetings were held in Oklahoma City and in Phoenix last week, and in Raleigh yesterday. I attended that meeting as an observer.

The first item on the agenda for each of the meetings was the subject of RTC customer service or user friendliness. We know that the Oversight Board is very interested in learning from us various steps that need to be taken to make it easier to do business with the RTC.

My tentative conclusion after reviewing the results of these meetings parallels my answer to a question on RTC user friendliness posed to me by a member of the Oversight Board at its May 15, 1991, meeting, to which I replied it is getting better but it has a long way to go.

This was a conclusion with which Chairman Seidman in later testimony that day agreed.

Accordingly, the subject matter of today's hearing would appear to be very consistent with the stated mission of the Advisory Boards. That is, to provide advice from the private sector on the policies and the programs for the sale or other disposition of the real property assets of the Nation's failed thrifts.

The number of criticisms of the performance of the RTC and the level of intensity of such criticisms appears to be increasing materially. A recent report by the Comptroller General, which the chairman alluded to a moment ago, with respect to RTC operation and management problems was a serious indictment of those internal mechanisms intended, in part, to support the real estate asset disposition activities of the corporation.

Had a report reflecting this level of criticism of its operations been received by a responsible large organization in the private sector, senior management and/or directorial concern would have been significant. Important staffing, procedural and policy changes would have been virtually certain.

It is not possible to dismiss this volume of criticism as being without very substantial merit. It is, I believe, reflective of a broadly held and justifiable perception that the RTC is a massive bu-

reaucracy, inefficient, and not businesslike. It is also my belief that this perception is matched by the realities.

A high degree of dissatisfaction continues to be experienced with respect to the user friendliness of the RTC, that is, its performance in such areas as response time, lines of communication, delegation of authority, consistency of operations, and other managerial or operational elements.

Performance deficiencies in these areas have contributed materially to very disappointing sales from the massive and growing inventory of real estate assets from the Nation's failed thrifts. The Oversight Board has been actively encouraging the RTC to recognize and to correct such problems.

A major flaw in FIRREA was to choose to staff the RTC largely with career bank or thrift bureaucrats. Although such staffing may have been suitable for handling resolutions, it is inappropriate now that the RTC's primary mission is asset disposition. That is, managing successfully the largest real estate sales organization in history in an entrepreneurial free market economy and society.

Senator DIXON. It may interest you to know, Mr. Searle, that I underlined that in your testimony. It is the essence, it is the thrust of everything that is a problem in the RTC today.

Mr. SEARLE. Thank you, Mr. Chairman. I appreciate that support.

While some have criticized the structure of the cleanup mechanism, that places operational and managerial responsibility on the FDIC and the RTC and puts oversight and policy responsibility with the Oversight Board, I have concluded this is a workable structure. I do not believe the structure has been the cause of the operational and managerial problems which have been identified.

I suggest that the RTC Board of Directors delegate total authority for management of the corporation to a newly employed professional experienced executive possessing impressive private sector credentials. This new chief executive officer would be able to proceed as soon as possible with the recruitment of a well-motivated senior management team possessing similar private sector experience and credentials.

There are several reasons underlying my recommendation. There is a widespread negative, multifaceted perception of the RTC. A change to such a new management team should help dispel some of the negatives as well as demonstrating that the Government was serious about insisting upon substantial improvement in the RTC.

The RTC should be improving its processes and its reputation for the better real estate market that seems likely in the next year or two. The RTC should change its emphasis emphatically from resolution to the marketing and selling of real estate and should develop a culture consistent with those functions.

Because of the disappointing past performance of the RTC, it has lost many of its past and/or prospective customers. They are unlikely to return until major positive changes in management and culture are evident and those changes have produced demonstrable improvements.

There are those who believe the disappointing past performance of present RTC management has not provided sufficient promise that it can reasonably be expected to provide the caliber of RTC

leadership obligatory in the future. And the RTC should be returned to a role where it is expending all of its efforts on depository institution regulation and supervision and on the administration of the insurance funds, especially in view of the gloomy instruments as to the number of bank failures that can be expected in the next year or two.

This change would be a very important first step in achieving improvements in the overall perception of the RTC in its sales and marketing processes, in the attractiveness of the assets, the selling, and in the performance of its staff. The change can be effective pursuant to existing law, thus avoiding unfortunate delay.

The role of the Oversight Board will be even more important in scrutinizing and reacting to the higher risk reward level naturally inherent in this approach. In my judgment it is urgent that these changes be made promptly and forthrightly and I also believe strongly they must be substantive and not cosmetic.

Thank you, sir.

[The complete statement of Philip F. Searle follows:]

Resolution Trust Corporation
Real Estate Asset Disposition Activities
Summary of Statement By
Philip F. Searle

The number of criticisms of the performance of the RTC, and the level of intensity of such criticisms, appear to be increasing significantly. A recent report by the Comptroller General with respect to RTC operational and management problems was a serious indictment of those internal mechanisms intended in part to support the real estate asset disposition activities of the corporation. There is a widely-held perception that the RTC is a massive bureaucracy, inefficient and not businesslike.

A high degree of dissatisfaction continues to be experienced with respect to the "user-friendliness" of the RTC, i.e., its performance in such areas as response time, lines of communication, delegation of authority, consistency of operations, and other managerial or operational elements. Performance deficiencies in these areas have contributed materially to very disappointing sales from the massive and growing inventory of real estate assets from the nation's failed thrifts.

A major flaw in FIRREA was to choose to staff the RTC largely with career bank or thrift bureaucrats. Although such staffing may have been suitable for handling resolutions, it is inappropriate now that the RTC's primary mission is asset disposition, i.e., managing successfully the largest real estate sales organization in history in an entrepreneurial, free-market economy and society.

Some observers have criticized the RTC's dual board structure for at least part of the problem. However, FIRREA placed responsibility and authority for management and operations of the RTC with the FDIC. The Oversight Board has been actively encouraging the RTC to recognize and correct the problems which are generating the high level of criticism presently being experienced by the RTC.

I suggest that the RTC Board of Directors delegate total authority for management of the Corporation to a newly employed professional, experienced executive possessing impressive private-sector credentials. This new chief executive officer would be able to proceed as soon as possible with the recruitment of a well motivated senior management team possessing similar private-sector experience and credentials.

There are several reasons underlying this recommendation:

- There is a widespread negative multi-faceted perception of the RTC: a change to such a new management team should help dispel some of the negatives, as well as demonstrating that the government was serious about insisting upon substantial improvement in the RTC;

- The RTC should be improving its processes and its reputation in preparation for the better real estate market that seems likely in the next year or two;

- The RTC should change its emphasis emphatically to the marketing and selling of real estate, and should develop a culture consistent with those functions;

- Because of the disappointing past performance of the RTC, it has lost many of its past and/or prospective customers. They are not likely to return until major, positive changes in management and culture are evident, and those changes have produced demonstrable improvements;

- There are those who believe the disappointing past performance of present RTC management has not provided sufficient promise that it can reasonably be expected to provide the caliber of RTC leadership obligatory in the future; and

- The FDIC should be returned to a role where it is expending all of its efforts on depository institution regulation and supervision and on administration of the insurance funds.

This change would be a very important first step in achieving improvements in the overall perception of the RTC, in its sales and marketing processes, in the attractiveness of the assets it is selling, and in the performance of its staff. The change can be effected pursuant to existing law, thus avoiding unfortunate delay and politicization. The present basic structure should continue to operate inasmuch as the role of the Oversight Board will be even more important in scrutinizing and reacting to the higher risk/reward level naturally inherent in this approach.

It is urgent that these changes be made promptly and forthrightly; they must be substantive and not cosmetic.

STATEMENT OF PHILIP F. SEARLE
before the
Subcommittee on Consumer and Regulatory Affairs
Committee on Banking, Housing and Urban Affairs
United States Senate
June 19, 1991

I am pleased to be here today to comment upon the real estate sales activities of the Resolution Trust Corporation. My views are those of a private citizen and are not necessarily those of any governmental or non-governmental entity, including the National Advisory Board to the Oversight Board for the Resolution Trust Corporation, of which I am chairman.

The focus of my remarks today is on the operational and managerial problems which, under the Financial Institutions Reform Recovery and Enforcement Act of 1989 (FIRREA), are the responsibility of the RTC and its operating manager, the FDIC. While some have criticized the structure of the clean-up mechanism that places responsibility on the FDIC and the RTC and puts oversight and policy responsibility with the Oversight Board, I have concluded this is an entirely workable and necessary structure. I do not believe that structure has been the cause of the operational and managerial problems which have been identified.

In this regard I note that in his testimony on June 11, the Comptroller General was very explicit that the RTC problems are operational and managerial, and are the responsibility of the RTC, not the Oversight Board. I agree with that analysis and concur with the Comptroller General's opinion that an oversight body is essential.

Despite my appearance here today as a private citizen, my views nonetheless are strongly influenced by my service as chairman of the National Advisory Board, as well as by more than 40 years of experience as a commercial banker, 25 years of which were as a chief executive officer. That experience was divided almost equally by early experience in community banking, followed by senior management positions in large multi-bank holding companies.

Because of the importance the activities of the advisory boards to the Oversight Board have played in forming my observations and conclusions, and because I believe the advisory boards are performing an extremely valuable function in bringing private sector input with respect to RTC activities to the attention of the Oversight Board and to the RTC, I ask your indulgence to allow me a few comments with respect to this particular subject.

FIRREA directed the Oversight Board to establish a national advisory board and no less than six regional advisory boards to provide advice from the private sector on the policies and programs for the sale, or other disposition, of the real property assets of the nation's failed thrifts. The National Advisory Board provides advice to the Oversight Board, while the regional boards provide advice to the RTC. As a practical matter, since the national board consists of the six regional chairmen and the national chairman, observations and recommendations from the national board tend to be directed at both the Oversight Board and the RTC. Each of the boards meets at least quarterly.

All members of these boards are unpaid volunteers, and they represent an excellent cross-section of experienced persons from real estate sales and development, banking and finance, appraisal, environmental activities, affordable housing and academia. Much is asked of them in terms of time and contribution of expertise.

In order to keep them motivated and involved, it is essential that they are convinced that their input is used and is appreciated, and I am pleased to report to you that such is indeed the case. When as national chairman I have been reporting to the Oversight Board, I have consistently been impressed with the sincere interest taken in our reports; further, we can easily identify instances where our recommendations were given important consideration in the formation of policies and/or procedures.

The fourth round of quarterly meetings of the regional advisory boards is under-way: meetings were held in Oklahoma City and in Phoenix last week, and in Raleigh yesterday. I have already received comprehensive reports on last week's meetings, and I attended yesterday's meeting as an observer.

The first item on the agenda for each of the six meeting was the subject of RTC customer service, or "user-friendliness". We know that the Oversight Board is very interested in learning from us various steps that need to be taken to make doing business with the RTC easier, as well as identifying ways to improve the process contractors need to follow in managing and selling properties.

Further, the Oversight Board has asked for our recommendations on improving RTC performance in the areas of response time, lines of communication, delegations of authority, consistency of operations and any other management or operational elements we consider appropriate. There was considerable valuable input received from witnesses from the private sector at each of the three recent meetings with respect to these and other subjects. In my closing comments I shall refer to one such presentation in particular.

My tentative conclusion after reviewing the results of these meetings parallels my answer to a question on RTC user-friendliness posed to me by a member of the Oversight Board at its May 15, 1991 meeting, to which I replied: "... it is getting better, but it has a long way to go." This was a conclusion with which RTC Chairman Seidman, in later testimony that day, agreed.

Accordingly, the subject matter of today's hearing would appear to be very consistent with the stated mission of the advisory boards, i.e., to provide advice from the private sector on the policies and programs for the sale or other disposition of the real property assets of the nation's failed thrifts.

These and other sorts of problems within the RTC are not lost on the private sector nor, for that matter, on observers and commentators from almost unlimited sources, and especially recently. It is unnecessary for me to attempt to recount or describe this literally enormous outpouring; suffice it to say (perhaps charitably) that the composite tone is not complimentary to the performance of the RTC.

Although I have read and heard much discouraging evidence about RTC performance from many sources, insofar as I am personally concerned, the most damaging and damning information as to the RTC's operations is contained in Comptroller General Bowsher's testimony of February 20, 1991, before the House Committee on Banking, Finance and Urban Affairs, and even more so on June 11 before your Committee on Banking, Housing and Urban Affairs.

Had a report reflecting this level of criticism of its operations been received by a responsible large organization in the private sector, senior management and/or director concern would have been significant. Important staffing, procedural and policy changes would have been virtually certain.

It is not possible to dismiss this criticism as being without very substantial merit. It is, I believe, reflective of a broadly held and justifiable perception that the RTC is a massive bureaucracy, inefficient and not businesslike. It is also my belief that the perception is matched by the realities.

A brief recitation of what may be wrong with the basic approach to solution of the real estate asset disposition problem may be useful in the context of seeking a better solution. FIRREA was well-intentioned and was designed to address an enormous problem. It exhibits at least one major flaw in its approach: the use of bureaucrats to manage a sales/marketing organization that must, if it is to succeed, be able to do business effectively and efficiently in an entrepreneurial free-market society and economy.

It was an unfortunate choice to staff this, the largest real estate sales organization in history, largely with career bank or thrift bureaucrats. The RTC may have been suitably staffed to handle resolutions, although now its mission is asset disposition and the staff should reflect this purpose.

It is very important to state that none of my observations or recommendations are intended in the slightest to impugn the integrity or the motives of, or to imply a lack of energy or commitment on the parts of, the current RTC leadership and staff. It is only to suggest that the experience, the mind-set, and the professional credentials of many who were asked to assume these responsibilities did not match up with the real-world requirements of their positions. The high level of criticism presently being directed at their performance is in one respect unfair to the extent that they were being asked to do a difficult private-sector-type job.

Let me say again that the existence of both an Oversight Board and the RTC and its operating board is not an impediment to success. Effective oversight is essential irrespective of whomsoever is operating the sales/marketing organization. My experience tells me that the existence and the direction of the Oversight Board has resulted in improvements in RTC policies and procedures which, absent that input, might well not have occurred.

This situation should not come as a complete surprise to anyone. The May 27, 1989 issue of the National Journal includes this quotation: "But as the final details of the S&L legislation are being hammered out, a number of people are beginning to wonder if the FDIC is up to the job. Federal Reserve Board vice chairman, Manuel H. Johnson recently described the FDIC as a 'ticking time bomb' that could go off if the agency is overburdened by bank and thrift oversight...."

This nation is faced with a financial undertaking of breath-taking proportions. RTC Chairman Seidman put it this way in testimony on May 15 before the Oversight Board: "....the hard part.... is to deal with those assets where there is not a ready market to sell them. And we have something close to $100 billion of those kinds of assets on hand.... I made a little calculation that if we could sell a million dollars a day of those assets it would take us 300 years to sell [them]..."

To deal as effectively and as efficiently as possible with this huge problem, and to minimize the unpleasant impact on the taxpayers, major changes need to be made in the way in which the problem is being dealt. What I propose will be controversial, and it will not necessarily be pleasant to implement. Nonetheless, because we are dealing with a problem of the magnitude just described, i.e., a problem of extremely serious proportions, firm and forthright action is obligatory.

I would suggest that we look at the solution in four dimensions:

- Improve the perception;
- Improve the process;
- Improve the products; and
- Improve the people.

Improve the Perception:

Improvement in all four of the foregoing areas would contribute toward improvement in the first, but it is addressed initially because it is most susceptible to improvement in the public's mind if such occurs as a result of prompt, decisive and high-profile corrective action.

In Comptroller General Bowsher's statement of June 11, 1991 before your Banking Committee, he proposed: "A third approach .... being discussed seeks to separate RTC from FDIC. This approach is based on the premise that the FDIC's ways of doing business, which rely heavily on disposing of assets using in-house capability, are inappropriate for RTC, which is mandated to rely heavily on the private sector. Proponents of this proposal suggest that the influence of the FDIC culture hampers RTC in carrying out its mission, and that FDIC has its hands full addressing problems with banks."

The version of the foregoing approach which I suggest is similar in philosophy and effect, but could be achieved more quickly, i.e., the RTC Board of Directors would delegate total authority for management of the Corporation to a newly employed professional, experienced executive possessing impressive private-sector credentials. This new chief executive officer would be able to proceed as soon as possible with the recruitment of a well motivated senior management team possessing similar private-sector experience and credentials.

This change in emphasis having been made, and given the escalation of gloomy estimates as to the number of bank failures which can be expected in the next year or so, there is ample relevant activity for FDIC within its existent regulatory and supervisory responsibilities. Not the least of these activities will be the disposition of, as Comptroller General Bowsher reported, about $30 billion in bank assets, an amount very likely to grow over the next few years.

Concentrating all its efforts upon the current bank situation will enable the FDIC to provide the type of hands-on attention to those problems which was evidently lacking on the part of thrift regulators during the thrift crisis of the 1980s. Hopefully this will reduce as much as possible the probability that there will be required of the taxpayers a replenishment of the Bank Insurance Fund.

There are several reasons underlying this recommendation:

o There is a widespread negative multi-faceted perception of the RTC: a change to a new management with impressive private-sector credentials should help dispel some of the negatives, as well as demonstrating that the government was serious about insisting upon substantial improvement in RTC;

o The RTC should be improving its processes and its reputation in preparation for the better real estate market that seems likely in the next year or two. In that regard, there are a number of signs that the economy overall is improving. Further, there are those who believe the real estate market is bottoming out, as evidenced by the formation by two major Wall Street firms of a $1.3 billion pair of funds designed to exploit (by "bottom-fishing") what is described as the worst real estate market in years;

o The RTC should change its emphasis emphatically to the marketing and selling of real estate and should develop a culture consistent with those functions;

o Because of the disappointing past performance of the RTC, it has lost many of its past and/or prospective customers. They are not likely to return until major, positive changes in management and culture are evident, and those changes have produced demonstrable improvements;

o There are those, including this commentator, who believe the disappointing past performance of present RTC management has not provided sufficient promise that it can reasonably be expected to provide the calibre of RTC leadership obligatory in the future; and

o As stated above, the FDIC should be returned to a role in which it is expending all of its efforts on depository institution regulation and supervision and on administration of the insurance funds.

It should be recognized that a change in the RTC senior management team, as well as in the culture at RTC, is likely to require assumption of a higher level of risk than in the past, as more varied and innovative approaches to asset sales are attempted. For that reason, the role of the Oversight Board will be even more important than it is now, with higher degrees of scrutiny, controls and measurement of performance being required. Comptroller General Bowsher's June 11 testimony seems to support such a conclusion.

Improve the Process:

Much of the emphasis in the current round of regional advisory board meetings is being placed on RTC user-friendliness. It follows that one key subset has to do with improving the process, i.e., the policies and procedures involving those who wish to do business with the RTC while managing and/or selling properties, lines of communications, delegation of authority and the like. One reason the advisory boards are looking into these matters is because the Oversight Board itself is evidencing great interest in them.

As chairman of the National Advisory Board to the Oversight Board, I am quite naturally aware of a number of activities and/or initiatives on the part of the Oversight Board intended to identify and react to areas deserving of improvement. The communications and cooperation between the Oversight Board and GAO as well as the RTC Inspector General have been very helpful in advising the RTC as to a variety of problems, but there still exists a great need for more RTC "user-friendliness", hence the urging of the Oversight Board that the advisory boards seek direct input from the private sector in that regard.

I shall keep my comments on improving the process quite brief. Other persons who are scheduled to follow me as witnesses are, I am sure, far better versed in the particulars of these matters than am I. I can say with certainty, however, that the problems are many and varied, and they deserve prompt professional attention if the process and the perception are to be improved.

Among the examples of elements that affect the process and which need attention are:

o Communications: prospective buyers/agents cannot get timely or adequate information; basic courtesies such as promptly returning calls should be instilled;

o Delegation or clarification of authority: an example is the confusion which can exist as to whom a prospective buyer should deal with when a foreclosed property was financed by mortgagees located in multiple RTC regions; RTC employees and private asset managers have lacked (or won't act upon) delegated authority;

o Seller financing approvals and utilization: is seller financing providing meaningful assistance to asset disposition? And if not, why not?

o Contracts:

o Are they too lengthy or complex? Do they intimidate the small contractor? Can they be couched in "plain English"?

o Bidding procedures: What is the effect of "low-ball" bidding and/or bids by undercapitalized or less than competent contractors?

o Are inventory reports adequate and timely?

o Do broadly-applied conflict-of-interest rules unfairly impact (local?) innocent parties?

o Are the requirements placed against contractors too unreasonable? (One advisory board member advises that an asset manager is required to submit 21 separate documents or reports, on every property, regardless of size, every month).

o Are SAMDA pools too large and diverse?

o Can the SAMDA process be streamlined?

o Are assets being placed under contract as soon as possible, hopefully thereby to retain more of their value?

o The largest problem realtors are having with local RTC offices is in determining who is responsible for properties in those offices. For example, I have heard that realtors will call regional or consolidated offices and not have their calls answered, or they are not able to get in contact with the person who is in charge of the specific asset;

o Realtors, among others, state that the RTC needs to develop, implement, and keep constantly updated lists of Real Estate Owned, accurate information on such assets, information on who might be brokering the assets, etc. The realtors note, in fairness, that the RTC is aware of this need and is in the process of developing a comprehensive list;

o A realtor serving on the RTC Task Force of the National Association of Realtors stated in an interview about the RTC that the RTC staff seems unable or afraid to "make deals".

Improve the Product:

As in the previous section, I shall mention only briefly certain areas within this category that I have learned were, and probably still are, problems. Subsequent commentators today are far better equipped to discuss them in detail. Again, however, I am convinced that substantial improvement is needed in this category as well, if the overall perception of the RTC is to be enhanced.

Considerable of the information in this and the foregoing section has been gained by an interchange of ideas established several months ago between myself and the RTC Task Force of the

National Association of Realtors. I took the initiative in making this contact because I believe the realtors represent an extremely large sales force which could dispose of significant numbers of RTC properties if they are kept adequately informed and if the sales and listing processes are working well.

There are a number of important areas deserving of improvement. I will mention a few that have come to my attention:

o Are there ways in which the availability of insured titles can be expedited, so that closings can be achieved within a reasonable period of time? This may require some mechanisms to reduce the amount of time necessary to deal with disputes and/or documentation problems.

o Many RTC assets are unattractive to the point they are relatively unsalable, or are saleable only at unrealistically low prices. There seems to be only a slight role in the RTC programs for builders. Can rehabilitation or "fix-up" possibilities for such assets be expanded, recognizing that such expenditures must be administered by experienced professionals and subject to meaningful controls?

o The appraisal process needs additional improvement. There appears to exist a need to make sufficient, standardized information available promptly to appraisers when requests for appraisals are made. And is the policy with respect to providing realtors with appraisals as workable as it should be?

o Are pricing policies realistic? A criticism is heard that prices often do not reflect the current condition of the relevant real estate market; and

o Is the quality of the information descriptive of assets subject to bidding adequate and delivered timely?

Improve the People:

The most important single action that can be taken with respect to improving the people is the recruitment of a highly-qualified, experienced chief executive officer and senior management team for the RTC from the private sector. Unless this is done, the likelihood that the necessary sales/marketing culture will be installed in RTC is nil. Likewise, it is unlikely that there will be sufficient improvements in attitudes in the field whereby there exists a meaningful commitment to serving the customer, as contrasted with the present bureaucratic environment.

Under the new RTC leadership and within the improved sales/marketing environment, performance incentives must be utilized to the maximum extent possible. The well-qualified and experienced senior executives essential to proper management of the

RTC cannot be attracted from the private sector unless there are meaningful incentives available to them if they perform well (and minimize the bailout cost to the taxpayers in the process).

CONCLUSION:

I have referred throughout these remarks to the input received by the Oversight Board and by the RTC from the various advisory boards. I believe the contributions of those boards to improvements in the overall RTC process have been significant, and can continue to be.

At the meeting of the Region 6 Advisory Board in Phoenix on June 13, there was an overflow list of persons who wanted to talk about RTC "user-friendliness"; prominent among them was William H. Rivoir III, the Superintendent of Banks for the State of Arizona. Mr. Rivoir made a comprehensive, insightful presentation which described RTC activities, policies and procedures as they have impacted Arizona. It is an extensive litany of examples of RTC inefficiency, ineffectiveness, poor management, and inappropriate policies.

I have taken the liberty of including a copy of Mr. Rivoir's testimony as part of my statement. I do this to show for the record what sort of meaningful reaction the advisory boards receive when they ask the private sector for input and information (I will concede that only a few of our witnesses provide testimony as detailed as that submitted by Mr. Rivoir).

I am not a lawyer, but my reading of FIRREA tells me that the changes I have suggested can be implemented pursuant to existing law. Achieving them in this fashion would eliminate unfortunate delay and politicization. I believe the changes should be made promptly and forthrightly. They must be substantive and not cosmetic.

Once the changes are made, it is crucial that the new RTC management be supported constructively by Congress and by the administration, and that it be given a reasonable period of time to demonstrate improvements. Effective changes in staffing and in the Corporation's culture will take time to achieve.

In closing I should reiterate that these thoughts are wholly my own and thereby are expressed as a private citizen. I believe they represent what is in the ultimate best interests of the nation and its taxpayers, and utilize an approach that is consistent with the American way, i.e., as much involvement in the solution of the problem as is feasible by the free enterprise system and the private sector.

END

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Superintendent of Banks
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before the
Resolution Trust Corporation
Regional Advisory Board
Region 6

June 13, 1991

Mr. Chairman. Members of the Board. I appear before you today in the unenviable position of having to bring you bad news. Before I give it to you, however, I want you to remember that I am just the messenger. And no matter how emotionally satisfying it sometimes may be to lop off the head of the messenger, such an action will not eliminate the underlying problems that I am about to report on.

In addition, I want you to be assured that in compiling this testimony, I have personally investigated RTC's operations here in Arizona by talking with a wide range of market participants - realtors, appraisers, investors, developers, syndicators, accountants, and lawyers. Some of these participants negotiate with or litigate against the RTC, and some work and negotiate for, or litigate on behalf of, the RTC.

Finally, I want to solicit your assistance as you listen to my testimony today. It is not my intention to give offense, but it will be difficult to avoid, because I have some very direct things to say. They will probably be particularly hard for the RTC personnel present today to listen to, so perhaps I should emphasize something important here at the start.

My major complaints against the RTC are structural in nature, but they manifest themselves through the actions of people. Therefore, some of my testimony will necessarily be cast in terms of actions by RTC personnel. But I do not want to criticize the individual RTC employee. As I have said on previous occasions, the

RTC has many competent and qualified employees who have the capability of doing a good job. It is the system within which he or she works, not necessarily the employee, that is at fault. With this as a preface, let me move to the substance of my testimony.

The overwhelming and consistent response from the parties I talked with is that the RTC process in Arizona is going poorly, and its ill effects are becoming more serious and widespread every day. The situation is so bad that I do not exaggerate when I say that the RTC's operations here are illegal, immoral, wasteful and downright stupid. Even worse, the problem lies at the very core of the RTC and it will take a complete overhaul of the system to rectify it. There are no quick or easy fixes.

Let me start with the fundamental problem. The RTC's basic design, and virtually all of the policies and procedures that have emanated from it during its relatively short life, have only one true underlying purpose - to shift blame. Congress and the previous administration created the savings and loan debacle, and then gave RTC the job of cleaning it up. This leaves the RTC to take the blame.

The RTC has reacted to this political reality by creating an enormous bureaucracy that is designed to ensure that it and its personnel never make a decision for which they could be held responsible. There is a policy or a procedure at every step in the process that requires either a mechanical application of a formula or the shifting of the decision to someone outside of the RTC. The result has been indecision on so massive a scale that words are inadequate to describe it.

This situation is serious. It is destroying our local real estate market, it is shrinking our property tax base, it is hindering the bonding ability of local jurisdictions, and, more to the point, it is causing the RTC to accomplish exactly the opposite of its stated goals, which are to manage the acquisition of assets from failed savings and loans and to dispose of those assets with the highest possible net recovery for the government and the taxpayer. Instead, the RTC is not managing anything, and it is squandering tens of millions of dollars that should be going to taxpayers.

These are, to put it mildly, strong charges. Now let me back them up. Let's start with asset dispositions.

Currently, the RTC is using two approaches to get rid of the assets it is forced to take back from failed savings and loans. They are (1) sales by private asset managers under the SAMDA program, and (2) direct sales by the RTC. I will discuss the SAMDA program first, because it is the centerpiece of the RTC's efforts to utilize the private sector to help dispose of these assets.

Simply stated, the SAMDA program is a bust and should be junked immediately. In its stead, the RTC should accelerate its bulk sales program. The assets the RTC owns must be totally free of the government as soon as possible. This is because, despite the high

expectations and laudable intentions of using the private sector to dispose of the assets in an efficient fashion, the SAMDA program has simply created another unnecessary layer of bureaucracy. ,

In implementing the SAMDA program, the RTC has held back too much decision making power from its asset managers, while at the same time saddling them with unbelievable paperwork requirements. Asset managers start by wasting the first 90 days of their contract preparing lengthy Asset Management Disposition Plans, known as AMDPS, for each asset under their management. Then they have to follow up with one weekly report, 12 different monthly reports, and three different quarterly reports. There is no time left to actually manage the asset.

In addition, asset managers are apparently picked for every reason except competence and knowledge of the local market. National companies, many of which have highly knowledgeable and competent local offices, can only be listed in the RTC's data base in one location. This means that lists of eligible contractors for Phoenix will not list any companies who may happen to have their names in the Dallas or Atlanta computers. Also, competent local companies are virtually ignored. The result is that contracts are going to out of town companies.

The RTC's almost total refusal to hire anyone who actually knows anything about the market into which they are to sell assets has become comical. There have been instances where newly appointed out of town asset managers have come to take over portfolios of properties in Arizona and have had to ask where the city of Tucson is in relation to Phoenix,or where downtown Phoenix is. How can these people be knowledgeable enough about our market to manage and sell property here.

Finally, the estimated recovery values in the SAMDA contracts have been set so long ago and at such unrealistic prices that managers have an extremely strong disincentive to sell the properties. Instead, the only economically feasible action is to hold properties forever, receive the management fee, and not take on anymore money losing work for the RTC. In addition, asset managers are left with little guidance or standardization for their work. The RTC does not provide asset managers with standardized forms for purchase and sale agreements, letters of intent, warranty deeds, limited representations and warranties, property management agreements, brokerage listing forms, office building leases, or triple net retail leases.

There is an alternative, however, for the asset manager, and that is to appeal the ERV. And how is that done? The asset manager gets to hire an appraiser to provide a new value. But guess what. That puts the asset manager in exactly the same position that the developers and speculators were <u>vis a vis</u> the savings and loans during the last decade. In other words, there's a big conflict of interest here. If an asset manager wants to sell property quickly, it pushes for an unrealistically low value. If it

wants to manage the property for a long time, it pushes for an unrealistically high value.

The asset managers accomplish this by using appraisers who are chosen solely on the basis of lowest price. Asset managers are also hiring totally unqualified personnel to engage appraisers. These personnel don't have any idea what goes into a proper appraisal. Hence, bids for appraisals can have a differential of over 300%, ranging from fly by night companies on the low end to reputable firms at the higher end. And, as I said before, the lowest cost always wins. Quality is not even considered.

However, despite all this failure in the SAMDA program, the RTC has accomplished its underlying goals. First, it has shifted blame for the failure away from the RTC and onto the asset manager. Second, because of all the reports it requires, it can deflect charges of inaction because it has created a huge paper trail that offers well-documented process as a substitute for real progress. This substitution of paperwork for results is a continuing theme throughout all areas of RTC's asset disposition operations.

The other disposition method used by RTC is direct sales out of the conservatorships and receiverships. This program is also plagued by major structural problems. Once again, the major flaw is that no one at the RTC will make a decision. RTC personnel spend more time looking for ways that a deal won't work than in finding ways in which it will work. And when they run out of excuses and are forced to agree to a sale, no one will approve the deal to get it closed. That is different from saying that RTC local personnel don't have adequate delegated authority. In many instances, they do. They just won't use it.

This consistent indecision manifested by the RTC has produced a continuing lack of responsiveness. It takes forever to get a decision made, and when it is made, it is overruled later, or it turns out either that the person who made it is reassigned, or the asset is reassigned, or the person never had the authority to decide in the first place. In fairness, I must add that some market participants feel that the RTC's responsiveness has improved, but they are either dealing in residential real estate or with a conservatorship. For the rest of the RTC's asset disposition program, responsiveness remains dismal.

The next issue under asset disposition concerns appraisals. The appraisals the RTC is getting are of very low quality. On one recent appraisal of a multi-million dollar project, the appraiser didn't even bother to contact the borrower who was managing the project to find out the status of the current leases. Then, the appraiser just arbitrarily factored in future rent increases which have little hope of being realized. Also, some RTC contracting personnel have made it clear that appraisals must be ordered on the basis of race, sex and price, with price being the most important. The informed judgment of the person hiring the appraiser is explicitly excluded from the process.

In fairness, there are some exceptions to this. However, the process still requires that appraisal contracts, as well as legal work, property management, sales listings, etc., be given out to companies whose names are generated in a random fashion from a list of registered providers. At Southwest Savings, this random generation process consists of putting slips of paper in a shoebox and picking out names like awarding door prizes.

Secondly, the RTC is still a very slow pay, taking up to 120 days to settle its bills. Major reputable appraisal firms will not bid for RTC work because they are undercut by inexperienced firms who are desperate for the work, and they won't wait 120 days for payment. Experienced RTC personnel are frustrated by having to lower their standards for the quality of appraisal work they must accept. They know they are getting bad work, but they are powerless to contravene policy in order to get quality appraisals.

Finally, the RTC does not make the appraiser's life easy. RTC cannot provide its own appraisers with rent rolls, legal descriptions of the property, a list of recent offers, or listing information and offers on similar RTC property. Frankly, RTC should not even order an appraisal until it has the standard information available. Also, if it must bid out an appraisal without this information available, it should so inform the potential bidders. Otherwise a $2,000 bid could turn out to a $10,000 job, and the result will be that the appraiser cannot afford to do a good appraisal.

Next, the RTC should substantially reduce its use of brokers' opinions. In one case, the RTC is paying $3,500 each for simple brokers' opinions on a package of mini-warehouses. Not only is this too much to pay, brokers' opinions are not independent estimates of value. Instead, they are opinions designed to facilitate a sale, a sale that might not be in the RTC's best interests. Frankly, brokers are telling the RTC what they want to hear: that the appraisal is much too high and that the property should be sold for much less. In other words, the broker wants his commission. The RTC should not rely on these parties whose interests conflict with the RTC's interests.

Of course, many people complain that appraisals take too long, but there is a collateral issue here that has received very little notice so far. That issue is environmental liability. Every piece of commercial property that the RTC wants to sell needs an environmental study. Once these studies are complete, they go to the Phoenix office's environmental section for approval.

This is where the bottleneck lies. Unless it is a major property, or a major environmental problem, the environmental study does not get approved. Its a simple lack of staff. And if the environmental study doesn't get approved, then the appraisal can't be completed. Hence, the property can't be sold. This backlog affects even clean sites, those where no environmental problem exists. They are all stacked up at the Phoenix office. This problem also affects loan workouts, which I will discuss below. The workout can't

proceed because the appraisal can't be completed without an approved environmental study.

The next issue concerns the terms of a property sale. First of all, the RTC standard form purchase and sale contract is not a contract at all. It is totally illusory. It specifically states that the RTC has absolutely no duty to live up to its part of the contract. And when RTC does default, it does so with impunity. Under the contract, no damages can be assessed against RTC, regardless of how much damage its actions may have caused. And don't be mislead. The RTC is causing damage. And even if that exculpatory language in the contract could be overcome, it doesn't matter. Any judgment against an RTC receivership would be so far down the payment priority list that it would never get paid. RTC employees know this and they exploit it.

The RTC feels no compunction whatsoever about breaking deals in escrow simply because somebody else comes along and offers a dollar more. This practice is not only reprehensible, it is stupid. Knowledgeable buyers will not put up with this type of practice, and they will cease doing business with the RTC. Also, that same RTC contract allows the RTC to break the deal if it suddenly decides that is doesn't like you. It's called the "Identity of Purchaser" section. It allows absolute discretion in rejecting a buyer for any reason. Once again, the contract specifically prohibits any liability on the RTC's part for any damages it causes.

Next, when RTC sells personal property along with realty, it gives a quit claim bill of sale. In other words, it sells you the personal property, takes your money, and then won't tell you whether it actually owned what it just sold. The buyer is totally exposed. Next, the RTC requires the buyer of income property to collect back rent owed and pay it to the RTC. This means that the buyer might have to refuse to accept the rent currently due to it in order to apply any payments received to RTC arrearages. Instead, if there is back rent due, the RTC should preserve its claims and pursue them itself.

Next, there are no provisions for pro-ration of personal property tax. Next, there are no provisions for turning over deposits and prepaid rents, etc. Next, if there is a loss during escrow, the buyer can cancel the contract if it is a "substantial loss." But if it is less than a substantial loss, then the buyer must close at the full price, with RTC assigning over all rights to insurance proceeds. But here's the catch - RTC self insures. There are no insurance proceeds. So RTC just forces you to close at full price and you get stuck with the loss, despite the clear language of the contract that RTC assumes all such risks and liabilities. For all these reasons, this purchase agreement is worthless, and knowledgeable buyers will not deal in this fashion.

The next issue is the intrusion into the asset disposition process of political concerns, both real and perceived. No one wants to force the RTC to negotiate with people who were engaged in

fraudulent activities. But the RTC has developed a paranoia about dealing with anyone who ever had anything to do with a property. In addition, the RTC Phoenix office has wrongly assumed the role of Lord High Executioner.

Instead of concentrating on how to obtain the highest net recovery on a particular asset, local RTC personnel are convinced that they have some sort of divine patriotic duty to reek moral retribution on everyone who was ever associated with a savings and loan, even an innocent borrower. The head of the Phoenix office and his subordinates told me this directly. They believe they must enforce moral obligations (as they see fit to define those obligations) even where there exists absolutely no legal obligation. Again, in fairness, I must point out that Mr. Koopmans was also present at that meeting, and to his credit, he recognized that this was an inappropriate posture for the RTC to take. But, unfortunately, nothing has changed.

The RTC must relax its conflict of interest standards and work with knowledgeable local players to get the highest net recovery. Unless there was fraud, don't blackball someone who caused a loss to the fund. He or she is mostly just another victim of federal tax and regulatory policy, Unfortunately, the RTC still annihilates everyone in its path, pursuing punitive litigation, forcing unnecessary bankruptcies, and deliberately destroying the lives and businesses of people whose only sin is that they borrowed from a savings and loan.

Why does the RTC do this? Two reasons. First, as stated above, because of their paranoia about perceived political ramifications, they insist on eliminating any chance that they could be accused of dealing with anyone who was even remotely involved in the savings and loan debacle, even as an innocent borrower. Second, and this goes back to that continuing theme I mentioned before, by litigating to the nth degree, RTC personnel can once again avoid having to make any rational business judgements for which they can be called to account. Now, the person to blame for all the decisions is the lawyer. He or she recommended all the litigation, for which, not coincidentally, they are paid handsomely from the government's bottomless trough. Also, RTC personnel can once again substitute documented process (such as foreclosure dates, deficiency judgment dates, and bankruptcy dates) for real progress.

It does not matter that the RTC now has even more stigmatized RTC property for which it must pay 18 to 20% a year in carrying costs. It does not matter that the borrower might have been willing and able to salvage the deal through renegotiation - a renegotiation which would have avoided RTC holding costs, management costs, appraisal fees, environmental assessment fees, environmental liabilities, sales commissions, etc. It does not matter that the money which the borrower might have paid in as a part of a renegotiation has now been spent on lawyers. It does not matter that yet another market player is in bankruptcy.

What matters is that RTC personnel never had to go out on a limb and make a reasonable business decision. What matters is that RTC personnel have shifted the blame for no recovery onto the lawyers and then onto the bankruptcy court. What matters is that RTC personnel shifted the blame to someone else, and in the process they created a documented paper trail to pretend that they achieved a worthwhile result.

The next thing the RTC is paranoid about is letting anyone make a profit from an RTC deal. RTC personnel have said so directly to potential buyers. In one case, RTC was willing to sell a piece of vacant land with two year financing. But a part of the deal was that the buyer could neither develop nor sell the land during the two years. Why? RTC said explicitly that they were afraid that the buyer would make a profit. Again, this is ridiculous and self-defeating. The only reason anyone will think of buying RTC properties is to make a profit. It's called capitalism.

Next, even if you strike a deal with the RTC, you have to worry about closing. Example #1. Buyer makes a bid for the property and is told he must pay cash. He goes out and raises the cash. He calls the RTC every day to make sure that the property is still available and is assured that it is. When he arrives with the cash, a new person is in charge of the file, and informs him that the property had been placed in escrow with someone else several weeks earlier. Example #2. Local RTC office puts a property in escrow. Buyer spends money for due diligence, etc. Then, unbeknownst to the local RTC office, the regional office sells the property to someone else. Example #3. Buyer has an RTC property in escrow on a seller financing deal. Before closing, but after paying substantial due diligence costs, a new buyer offers a lower price but pays cash. RTC breaks the escrow and sells to new buyer. I don't think further comment is necessary on these examples.

Another aspect of the asset disposition process that must be junked is the arbitrary implementation of the "exposure to the market" concept. While it is certainly a good idea in many instances to ensure that a property is adequately exposed to the market (in order to obtain the highest price), the RTC is using this concept as yet another excuse to not make a decision. We are aware of a number of instances where the RTC will refuse to sell property, or even negotiate with a potential buyer, without arbitrarily delaying the entire process for endless months in order to "expose the property to the market."

Many of the RTC's properties are not particularly attractive, and the only reasonable expectation of sale is to the person who contacted the RTC - often because they have some unique interest or position that makes this property attractive to them. RTC should follow that oldest of cliches and recognize that a bird in a hand is worth two in the bush. But instead of negotiating a sale with the prospective buyer at a price which would require the RTC to make a business judgment about what constitutes a reasonable price, the RTC defaults on its responsibilities and "exposes the property to the

market." Most times, the market ignores the property, and when the RTC returns to the first potential buyer, that person is either gone or offers less because of the market's response. In this way, RTC is losing millions of dollars through foolish consistency.

Next, when an offer is rejected by the RTC, that's all it does. It says "your offer is rejected. Good-bye." No reasons, no counter-offers, nothing. How does a buyer respond to such a message. First, with bewildered expletives. Second, by never dealing with the RTC again.

The next item is the RTC's timetable for lowering prices to meet the market. This policy must be eliminated immediately. The practical effect of this policy is to say to the world: "Don't buy now. This is not the bottom of the market. It will go much, much lower." The well intentioned idea behind this policy was to allow RTC personnel the flexibility to lower prices from potentially unrealistic appraised values down to real market values.

When the first version of this policy was implemented a year ago, we spoke in favor of it. We were wrong. By enforcing a mechanical racheting down, the effect is to turn the policy on its head. It actually forces the market lower and prevents sales from happening. Incidentally, while I acknowledge that the ostensible purpose of this policy was well intentioned, it is appropriate to point out that, once again, the effect of the policy is to allow RTC personnel to avoid making business judgments for which they could be criticized. If the property doesn't sell, the fault lies with the appraised value which was set, not coincidentally, by someone outside of the RTC. If the RTC drops the price by the stated percentage, the RTC employee is simply effectuating a mechanical application of a policy.

This mark down policy is having and will continue to have an extremely destabilizing effect on a vast amount of real estate. And instability is just not in the RTC's best interests. The only way RTC can ultimately obtain the highest net recovery is to sell into a stabilized market. Somehow, the RTC must convince the market that the bottom is here now.

The way for the RTC to achieve that is to give its personnel the ability to sell for what they, in their best judgment, believe represents a good deal for the RTC. The amount of money the RTC would probably lose through some bad judgments pales into insignificance in comparison to the money it will continue to lose because it is driving the market down, and because it can't or won't sell in a prompt and orderly fashion.

That inability or refusal to sell was recently illustrated by a case here in Phoenix. Although the asset was unusual, the RTC's handling of the case was typical. The asset in question is a 30 animal and two chariot merry-go-round - a perfect metaphor for the RTC. The RTC tried to sell the carousel recently. It got bids from around the country, after nationwide advertising. The RTC wanted

$175,000 - the highest of 10 bids was $89,000. This response was the market telling the RTC that the appraisal was wrong. But did RTC listen? No. Apparently they feel that the next time it is offered, someone will bid higher. I doubt it.

The point of this one small example is that RTC seems obsessed with trying to recoup value that doesn't exist. It probably never existed, it was just pumped up by the steroids of mid-80's tax policy. The RTC has to face reality and try to recoup what value is actually left in its assets. When the market tells you what the value is, sell at that value.

The next issue is auctions. In my previous testimony, I praised the RTC for its auction of 65 properties conducted by Grubb & Ellis. I strongly urged that the next auction occur as soon as possible to take advantage of the momentum the first auction established. David Cooke, the Executive Director of the RTC, was kind enough to write me about my previous testimony, and in part he said "Your insight into the marketing time of auction events is correct. The next auction in Phoenix should take place quickly."

Four months have already gone by, and no other auction has been held. This is not "quickly" by anyone's definition, and the precious momentum is likely lost. In addition, it is my understanding that only one third of the properties were sold at the auction, and that sales on only another third or so are expected to close this year. This is like repeatedly stepping halfway towards a wall - you never actually get to your goal. At the rate the RTC is taking back new properties, it can't afford to step only part way towards its goal by leaving a significant portion of an auction's properties unsold. RTC will get further behind with every event.

Next, we should discuss marketing strategies. The RTC is not physically capable of effectively marketing all of its properties at the same time. Therefore, some properties will have to remain off the market for the time being. RTC should carefully choose certain types of property to keep off the market. Foremost among these is raw land. The holding costs are the least here, and the market is the worst. You simply cannot force the market to buy product it doesn't want, even if you price it ridiculously low. Therefore, much of the raw land inventory of the RTC should be land banked simply to allow the market to absorb it at a sustainable rate and to allow the RTC to concentrate on selling other assets.

There is one major exception to the foregoing advice, however, and that is bulk sales of assets. All RTC assets, including raw land, should be included in bulk sales. It is always better to get the decision as to disposing of an asset completely into the hands of a private owner acting for his or her own private pecuniary interests.

The last issue I want to discuss under this asset disposition heading is the credit committee system. This process also seems to be a big bottleneck. My information is that only five to seven deals are even presented each week to each receivership's credit

committee. Hardly a breakneck pace. What's worse is that only two or three of those cases get approved, so the backlog just gets bigger and bigger. Finally, and this ties in with the overuse of brokers' opinions, RTC's own personnel feel that much of the RTC's inventory is simply being given away. The sales personnel strike deals based upon brokers' opinions without even bothering to discuss value with their own in-house appraisal department. They then ask the appraisal personnel to rubber stamp the lower value suggested by the broker, and pass it on to the credit committee. This is not the case in the remaining conservatorship, Southwest Savings, but it does hold true for the receiverships. The receiverships could learn a lot from Southwest.

The next issue is loan restructuring. We have harped on this issue over and over again, and we continue to receive the same lip service from the RTC. Unfortunately, we don't see any results. Contrary to the RTC's public position, loan restructurings are not being pursued, and foreclosure is still the first and only resort. Of course, this practice does serve RTC's underlying purposes. RTC can never be criticized for being too easy on a savings and loan "kingpin" if it mindlessly litigates every troubled borrower into submission. But this is ultimately self-defeating for the RTC.

First, as we have stated over and over again, the RTC does not need any more property in its REO portfolio. The RTC should be desperately seeking ways to minimize its use of foreclosure, rather than using it in virtually every case. Again, I recognize that a file that shows trustee sale dates, deficiency suit filing dates, bankruptcy filing dates, etc., presents a superficial impression of progress. But as we have said before, this is false progress. It is process, and not results. The real results are that RTC is forcing out of business the very parties who could most effectively assist it in salvaging problem loans and problem projects. These people are the real estate professionals who are currently in the deal and are willing to work hard to save it, if only the RTC would take a realistic look at what is left to be saved.

When I made the same points at your last meeting, I followed up by meeting directly with the local RTC office on a particular case. A very well respected and reputable local builder took the courageous step of letting me use its loans from one of the conservatorships as a case study. In preparation for the meeting with the RTC, I met with the developer and reviewed the loans and the status of the property securing them. So that I would not be in the position of having listened only to a borrower's perspective, I also met with senior loan work-out specialists at two of our major local banks. I discussed how they might structure a work-out on these loans if the loans belonged to their bank.

Armed with this information, I met with Mr. Koopmans, Mr. Porter and two of Mr. Porter's associates. After about two hours of what the diplomats call a candid exchange of views, the RTC agreed that the case study was indeed the type of transaction where a negotiated settlement would be in the best interests of the RTC (even

though these loans had already been set for foreclosure). They agreed that the types of concessions on both sides that I discussed were the types that they would pursue, and they agreed that they would in fact pursue negotiations with this borrower.

Months have now gone by. The RTC has, in fact, had further negotiations with the borrower, but no resolution is in sight. The question I ask is, why not? There has been plenty of time. This case has been given specific prominence by the fact that I brought it to their attention through a personal meeting. They must have known that I would follow its progress to see if the RTC actually lives up to its fine sounding pronouncements. And yet, they have not even been able to renegotiate successfully in this one high profile matter.

This does not augur well for the hundreds of other cases that did not get special attention. RTC must somewhere find the strength of will to actually finalize a deal rather than keeping it going around and around and around. This case study should have been negotiated and closed a long time ago. The longer it festers, the worse the result will be to the taxpayer. RTC is shirking its legal duty by its inaction, and this must stop.

On a slightly more detailed level , the RTC should recognize that its success in realizing recovery on its problem loans is, in most cases, tied inextricably to the current borrower. To make the process work (and by work, I mean obtaining actual recoveries and resolving the outstanding work load. I do not mean creating more meaningless paperwork) the RTC must realize that it has to become partners with the borrower - a de facto joint venturer. In other words, the RTC and the borrowers share a great deal - they both have interests in the project that is troubled. They both want the project to succeed so that they both get some money out of it. And they both should realize that the best way to achieve that is to work together, developing mutual goals and strategies.

In this context, working together requires several items. First, the RTC must get an accurate idea of what is really left of the value of the project. Forget about those appraisals done in 1986 - they're worthless. Also, forget about the difference between the loan amount and the present value. That difference is already lost, and if RTC can't get past harping on this loss, and trying to blame the borrower for it, it will never face the reality of the situation and be able to achieve its statutory goals.

Next, it is clear that each side to these negotiations will start out at different points. That's what negotiations are for. But the point of the negotiations must be to finally strike a deal. Unfortunately, the RTC is not very interested in striking a deal. If it cannot dictate its own unrealistic terms, it takes its ball and goes home. Like the child that does the same thing at the playground, the RTC is ultimately the loser in this process. It then ends up with more and more property - property which it manages ineffectively and then sells at a liquidation price.

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This method of operation must change. One step in that process would be for each side to disclose the basis for its position. In other words, each side should disclose its appraisal, or at least the assumptions and conclusions of the appraisal. Then, after both sides have had the opportunity to comment on the validity of the appraisal factors, the RTC should exercise its own business judgment to reach a negotiated settlement.

Lastly, the RTC must think about how it will divest itself of the pool of restructured loans it will obtain if it begins to do good faith restructurings. We suggest that these restructurings be accomplished with relatively uniform documentation and terms so that these loans can be sold in pools. If the restructurings are accomplished on realistic terms (particularly the new loan amounts), and the RTC otherwise improves its operations so that it stabilizes our real estate market, these loans will become better and better credits, and easier to sell.

The next issue I would like to discuss is property management. Once again, the RTC is shooting itself in the foot by relying on arbitrary policies that eliminate any requirement for the exercise of business judgment. First, RTC will not spend any money to improve its properties. This is taken to the ridiculous extreme of not even being willing to pay for tenant improvements for tenants who want to rent empty RTC space. Also, RTC will not spend money to enhance value. In one case, a developer asked the RTC for less than $25,000 as its share to master plan a parcel that belonged to the developer and which was surrounded on two sides by RTC property. As a result, the developer's property has now been master planned alone, and the majority of commercial, retail and multi-family housing will be on the developer's parcel. The probable loss to the RTC, which will now only get R-1-10 zoning, is about $2million. That's a lot more than being penny wise and pound foolish.

Another important issue is the zoning on RTC land. Nothing is being done to preserve favorable zoning. That is viewed as the buyer's problem. But zoning does not last forever, and once it is gone, it might never be recovered. Neither will the value it conferred.

The final matters I would like to discuss are the RTC's practices regarding litigation. According to its own lawyers, the RTC is endlessly pursuing uncollectible claims, failing to respond to or rejecting reasonable settlement proposals, and pawning off on the lawyers all kinds of non-legal business decisions. The RTC's lawyers have found a perfect client - a client with endless amounts of money who is willing to litigate forever and who exercises no control over its counsel.

This situation has a number of causes, including the continuing theme of RTC passing decision making responsibility on to non-RTC personnel. But there is also a deeper, and more insidious, cause. We have already talked about how RTC personnel are a law unto themselves, unanswerable to anyone they damage. We have also

talked about how the RTC's paranoia about political concerns, and their messianic compulsion to mete out justice, have caused them to reject reasonable settlements and restructurings. They prefer instead to litigate a borrower into submission without regard for the morality, let alone the cost effectiveness, of their actions. But into this mix we must now add the D'Oench, Duhme doctrine. This doctrine has made the RTC invincible, and the RTC has used this power with a vengence.

Until a very few years ago, D'Oench, Duhme & Co. v. FDIC was an obscure banking law case that had lain essentially fallow for almost 50 years. Decided in 1942, it says that when a regulatory body takes control of a depository institution, it is not bound to honor any claims or defenses unless the factors which created that claim or defense are a part of the official written records of the institution and are part of a transaction which has received official approval of the institution's board of directors, executive committee, loan committee or the like. Congress later codified certain applications of that doctrine into 12 U.S.C. Section 1823 (c).

From its beginning in 1989, the RTC has latched onto D'Oench as a weapon of formidable power. The result has been the creation of a bureaucratic agency whose self-concept is rivaled only by the Internal Revenue Service. The RTC has been abetted in this attitude by its outside attorneys who are never hesitant to push a procedural advantage to the limits of ethical conduct and sometimes beyond. For whatever reason, the RTC hires and, apparently, rewards those attorneys who are the most difficult to deal with on a reasonable basis.

As an example, in the litigation involving construction of Phoenician Hotel, after two years in state court, with trial coming close, the RTC suddenly removed the case to federal court just when state rules would require RTC to list its witnesses and exhibits. The subcontractors, who really did do the construction work, and have legitimate claims for payment, have had their claims bought out for a small percentage of their worth, with taxpayer money providing the funds. The same taxpayer funds have exhausted those subcontractors by two years of intensive state court litigation. The final straw is the moratorium which is then imposed in federal court by the RTC to push the trial date off even further. This is done, not in the interests of justice or morality, but solely because the RTC, under D'Oench, etc., has the power to unfairly bludgeon these people into unfavorable settlements. Thus, the unchecked excesses of government power have severely harmed innocent citizens simply because it had the power, and the lack of moral character, to do so.

We find ourselves now with a governmental agency intent not upon resolving a bad situation in the manner best for all of this country's citizens, but one focused on punishing all of the "participants" in the S&L disaster, even when those "participants" were, themselves, the victims of the collapse. We find ourselves with a governmental agency not striving to construct a long-term

solution, but one satisfied with viciously attacking each individual problem with no thought for whether that attack forwards the legtimate goals of the RTC. And we find ourselves with a government agency where its agents have adopted a rigid moralistic attitude that stifles even rudimentary problem-solving techniques and attitudes.

Government has a duty to treat its citizens fairly. It must self-police since the powers we necessarily grant government are broad. The RTC has breached this covenant with our citizens, and some measure of control and justice must be restored.

Mr. Chairman, I could go on and on, but I believe that the major points have been made. The RTC is violating its own legal mandate by failing to obtain the highest net recovery on the assets it is taking back and by causing serious and unnecessary harm to our local real estate market. The RTC is acting in a morally reprehensible fashion by violating its own contracts and wontonly driving individuals and companies into bankruptcy. The RTC is wasting millions of dollars of taxpayer money on needless litigation, and it is acting stupidly when it ignores zoning issues, when it refuses to restructure problem assets, when it refuses to pay even modest amounts to significantly enhance the value of its assets, and when it refuses to make any decisions other than default decisions.

Your job, Mr. Chairman and members of this Board, is to make these problems clear to the Oversight Board. That Board, which wrote the Strategic Plan, and which sets the overall policies of the RTC, must take prompt action to see that the policies of the RTC are changed. The policies must be designed so that they encourage real results, rather than elaborate processes. They must be designed to encourage RTC line personnel to make the business decisions of which they are capable, rather than hobbling them with a stifling bureaucracy. They must be designed to ensure that the RTC operates in a just and equitable fashion.

Lastly, Mr. Chairman, I implore you to forcefully contradict the assertion by National Advisory Board Chairman Philip F. Searle in his May 15, 1991 remarks to the Oversight Board. Mr. Searle said that he has heard nothing about any discernible adverse impact on real estate markets arising out of RTC asset sales activities. Tell him that the RTC's activities in Arizona are destroying Arizona's real estate market, and they are destroying the RTC's ability to do it's legally mandated job. Mr. Chairman, make sure that Mr. Searles cannot make that same misstatement again.

Thank you for the opportunity to appear here today, Mr. Chairman. I apologize for the length of my testimony, and I thank you for your indulgence in letting me present it in full.

Senator DIXON. I thank you, Mr. Searle.

Interestingly the two major parts you make in your oral testimony are exactly the things I have underlined in your written testimony—your statement about the composition which is the major flaw in my view in this organization today, and your recommendation of a chief executive officer with impressive private sector credentials and so forth. I will be back to you to develop those points.

But I think that is the key to the problem we have.

Mr. Crocker, we're delighted to have you.

STATEMENT OF DONALD CROCKER, PRESIDENT AND CHIEF OPERATING OFFICER OF THE J.E. ROBERTS CO. OF ALEXANDRIA, VA

Mr. CROCKER. Thank you, Senator Dixon.

My objective in my presentation is to try to help you understand my perspective as a contractor that currently works with the RTC on some very complicated portfolios as to our view of how it's working and how far it's come.

The RTC is the agency which must manage and recover upon the detritus of the numerous savings and loan head-on collisions. It is easy to blame the agency as if it was at fault for the need to appropriate the billions of dollars which have already been lost. Yet, if it does a capable job in carrying out its mandate, losses can be significantly reduced. But the vast portion of the cost is already impacted in the system and will have to be paid by the taxpayers.

So the RTC is like a Saddam Hussein piñata. Everyone is eager to take their swings.

My perspective from having been there in my capacity as the original director of the FSLIC, Western Region Liquidations, and since as president of the J.E. Robert Co., taking over such failed institutions and seeing first hand the challenge which the RTC receiverships must face.

Each receivership involves thousands of difficult liquidation issues that most would find unimaginable and probably inexplicable. And each Friday some more of the fatally injured catastrophes are admitted to the RTC trauma ward, increasing geometrically the required crisis management burden.

I am not here on anyone's behalf, except as an individual who does this type of work for a living and finds it challenging and rewarding. I have some familiarity with the issues that you have posed in your agenda for us today.

In my printed response I have taken the liberty of giving the RTC a report card, grading its current quarter of work. And I stress the word "quarter" because I think it is important to focus on what it is doing now, not what it has been doing in the past. I gave it better than passing grades.

It is offered to point out that there are many important policy developments and management achievements which the RTC has accomplished to date, and huge improvements from quarter to quarter and month to month, are being made. In the crisis management business, dynamic improvements are normal as control is attained. And that is the responsibility the RTC has and they have to take control of a new problem weekly if not daily.

By this testimony, I hope to widen the aperture of the lens on the RTC, in order to view some of the good and not just focus on the areas where performance is incomplete. I am confident that there are no significant areas where there is unacceptable performance which have not already been identified by the RTC and efforts are underway to find solutions, and some of these issues almost defy solution. I believe the RTC has always acted in good faith and with hard work in its efforts on the taxpayers' behalf. In my book that counts for a lot.

The extraordinary number of tasks which have faced the RTC require prioritization and many take substantial planning and lead time for accomplishment. Much of this was uncharted territory not adequately mastered by any other agency or private firm. A classic example is the development and implementation of an adequate, integrated MIS system for management, accounting, and control of millions of troubled assets and thousands of contractors. Lack of completion of the various key MIS needs were addressed in the GAO report. This was an extremely challenging task which neither the FSLIC nor the FADA nor the FDIC had ever accomplished in their long periods of being in business.

It is thus important to note that most of the recent criticism which I have heard and read fall into two categories: Deficiencies which existed in the past but that have now been substantially corrected, and projects which take a long period of time to properly plan and implement and are part way down the track but are not yet finished.

As it affects the work which we do, I am not aware of any area which is not in some stage of development if not completed.

So, I hope you will view my report card on the RTC as an effort to point out from our perspective as a contractor who specializes in recovering on troubled debt and foreclosed assets, that I greatly respect what the RTC has been able to achieve to date. My view is that the glass is more than one-half full now, although most of what I read gives the impression that it remains empty, or more than likely it was clumsily spilled. This is unfair and demoralizing to a lot of good people doing an almost impossible job.

We all agree the RTC has a long way to go, especially with its many additional OTS problem cases in the wings. How the RTC effort is viewed by the public will have an important impact on its ability to retain, attract, and motivate its personnel necessary for success.

My comments are also influenced by the very favorable working relationship which we have had with the RTC Houston Gulf Coast Consolidated Office with respect to our largest contract, as well as the other RTC offices with whom we have worked. This working experience has truly been a best case scenario and this judgment is based on my many years of experience in dealing with all sorts of receivership contractor relationships on both sides of the table.

So I thank you for the opportunity to give me a chance to participate today. I am very interested in expanding on my remarks as far as marketing. I see that the red light is on.

I would like to make one quick point. I had four of our people "shop" different offices of the RTC's sales centers yesterday regarding different types of assets that they theoretically might want to

buy, to get information as to whether those operations could give us information that would be interesting to a buyer.

Three out of four of the experiences were very positive. So I suggest as an experience that you may want to try, just call up one of the offices of the National Sales Center or the local sales centers and you will get a much better feel for what they have been able to accomplish in the current period of time.

[The complete statement of Donald Crocker follows:]

REMARKS BY DONALD W. CROCKER
AT
SUBCOMMITTEE ON CONSUMER AND REGULATORY AFFAIRS
SENATE COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS
JUNE 19, 1991

The RTC has extremely high visibility due to its huge effect on the U.S. economy.

Costs incurred by the RTC to protect insured deposits and cover its operating expenses now greatly exceed, and will always so exceed, the value of the assets it acquires. Nothing spent by the RTC builds, heals, or gives your constituents anything they don't already take for granted. As in the case of the horse already being out of the barn, the loss to the taxpayer has already mostly occurred, and its unfathomable magnitude is imbedded in empty buildings and vacant land. The consumer's opportunity must be as a buyer or contractor in this cleanup

The RTC is the agency which must manage and recover on the detritus of the numerous S&L head-on collisions. It is easy to blame the agency, as if it was at fault, for the need to appropriate the billions of dollars which have been already lost. Yes, if it does a capable job in carrying out its mandate the losses can be significantly reduced. But the vast portion of the cost is already impacted in the system and will have to be paid by the taxpayers.

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My perspective is from having "been there" in my capacity as original Director of the FSLIC, Western Region Liquidations, and since as President of the J.E. Robert Company, taking over such failed institutions and seeing first hand the challenge which the RTC Receiverships must face.

Each Receivership involves thousands of difficult liquidation issues that most would find unimaginable and probably inexplicable. And each Friday some more of the fatally injured catastrophes are admitted to the RTC trauma ward, increasing geometrically the required crisis management burden.

I am not here on anyone's behalf, except as an individual who does this type of work for a living and finds it challenging and rewarding and have some familiarity with the various agenda questions which you have posed to us.

In my printed response, I have taken the liberty of giving the RTC a Report Card grading its current quarter of work. I gave it better than passing grades. It is offered to point out that there are many important policy developments and management achievements which the RTC has accomplished to date, and huge improvements from quarter to quarter and month to month which are being made. In the crisis management business, dynamic improvements are normal as control is attained.

By this testimony, I hope to widen the aperture of the lens on the RTC, in order to view some of the good and not just focus on the areas where performance is incomplete. I am confident that there are no significant areas where there is unacceptable performance which have not already been identified by the RTC and efforts are underway to find solutions, and some of these issues almost defy solution. I believe the RTC has always acted in good faith and with hard work in its efforts on the taxpayers behalf. In my book that counts for a lot.

The extraordinary number of tasks which have faced the RTC require prioritization and many take substantial planning and lead time for accomplishment. Much of this was uncharted territory not adequately mastered by any other agency or private firm. A classic example is the development and implementation of an adequate, integrated MIS system for management, accounting and control of millions of troubled assets and thousands of contractors. Lack of completion of various key MIS needs were addressed in the GAO report.

It is thus important to note that most of the recent criticism which I have heard and read fall into two categories: 1) deficiencies which in the past existed but that have now been substantially corrected, and 2) projects which take a long period of time to properly plan and implement and are part way down the track but not yet finished. As it affects the work which we do, I am not aware of any area which is not in some stage of development, if not yet completed.

So, I hope you will view my Report Card on the RTC as an effort to point out from our perspective, as a contractor who specializes in recovering on troubled debt and foreclosed assets, that I greatly respect what the RTC has been able to achieve to date. The glass is more than 1/2 full now, although most of what I read gives the impression it remains empty, or more than likely, was clumsily spilled. This is unfair and demoralizing to a lot of good people doing an almost impossible job.

What the RTC needs is a boot camp to which representatives of various critical constituencies could serve from time to time to get a better perspective of the complexities and intensity of the problems which must be dealt with in massive numbers. For those who haven't had the actual experience, one is more easily frustrated than understanding.

We all will agree the RTC still has a long way to go, especially with the many additional OTS problem cases in the wings. How the RTC effort is viewed by the public will have an important impact on its ability to retain, attract and motivate its personnel to succeed.

My comments are also influenced by the extremely favorable working relationship which we have had with the RTC Houston Gulf Coast Consolidated Office with respect to our largest contract, as well as the other RTC offices with whom we have worked. This working experience has truly been a "best case scenario" and this judgement is based on my many years of experience in dealing with all sorts of Receivership contractor relationships on both sides of the table.

Thank you for the opportunity you have given me to participate in this important discussion on the performance of the RTC.

OUTLINE OF REMARKS

BY

DONALD W. CROCKER, PRESIDENT AND COO

J.E. ROBERT COMPANY, INC.

TO THE

SUBCOMMITTEE ON CONSUMER AND REGULATORY AFFAIRS

SENATE COMMITTEE ON BANKING, HOUSING AND URBAN AFFAIRS

JUNE 19, 1991

RTC REPORT CARD
QUARTER ENDED 6/19/91

Subjects	Grade	Comments
1. Effectiveness of RTC Personnel		
a) Established Clear Goals and Objectives for Liquidations	A	The Strategic Plan, Asset Management and Disposition Manual and verbal interface with RTC personnel all reinforce clear objective to follow FIRREA and to liquidate assets promptly at their current net realizable value.
b) Pure Motives and High Ethical Standards	A	No other government agency has higher standards or more complete rules to maintain a squeaky clean operation.
c) Qualified, Motivated Personnel who Interface and Oversee Our Company's RTC Contract Performance	A+	Our working relationship is the best case scenario in the effective interface between the public and private sector.
d) Morale	C	Our perception is that the extremely intense and continuing workload, limited staff and constant criticism from all quarters is taking its toll and will result in some turnover which is detrimental to the RTC.
e) Avoidance of Scandal; Dealing with Impropriety	A+	Compared to other government agencies and other huge, complex organizations, the RTC's record to date is excellent.
f) Imposition of Controls and Regulations on Contract Performance	B	The vast majority of the rules issued make sense and address real substantive problems, but there are an awful lot of them with which to keep track, making full compliance a serious challenge for contractors.
g) Saiesmanship	A-	The RTC has clearly stated its objective to sell and not hold and has come very far in building an effective nationwide sales organization to deal with very tough assets in a soft market without much available institutional financing.
h) Getting the Liquidation Job Done	B+	Many obstacles have been overcome and great progress is now being made in actively managing and selling assets, using numerous resources in the private sector.
Summary of Performance: If fairly compared in skillfully controlling, managing and recovering on a Herculean and burgeoning inventory of a wide variety of asset types, especially troubled assets, the RTC is now doing a very credible job far superior to most other government agencies and many financial institutions with similar challenges (which are generally on a much smaller scale).		

2. Consistency of RTC Policies		
a) Clear Statement of Policy	A	Policy is clearly stated-sell assets at fair value. Unlike many institutions and government agencies with troubled assets, the RTC is attacking the problems with a clear focus on sales and recoveries.
b) Comprehensive Statement of its Policy	A-	The RTC has produced voluminous and comprehensive edicts consistent in purpose with RTC's Strategic Plan.
c) Lack of Internal Inconsistency	A-	With few exceptions, the RTC's policies are very consistent with each other and the stated goals. Exception: The Contractor Asset Management and Disposition Agreement disincentivizes the contractor from accepting any seller financed sales at a time when such a method of sale is being authorized as required to sell certain assets.
d) Aligning of Contractors' Interests with Those of RTC	A-	With the exception noted above, the form of contract clearly motivates the contractor to achieve RTC's goals.
Summary of Performance: When the literally thousands of RTC policy pronouncements, rules and regulations as they affect asset management contractors are analyzed, they are very consistent with the RTC's goals in the Strategic Plan.		
3. Adequacy of RTC's MIS (As It Relates to Contractors Only)		
a) Basic REO Inventory	A-	"REOIS" in place in Texas and being input elsewhere, and upgraded to REOMS, which will be very useful to marketing staff.
b) Accounting Systems to Monitor Contractor (AMS)	B	Developed but not yet operative. Training is just beginning. There will be some problems in implementation.
c) Accounting/Data Processing Systems	B-	Extremely difficult to manage/integrate. Much to be done.
Summary of Performance: Designing and installing a specialized MIS is one of the most difficult challenges any enterprise faces. Delays and numerous complex problems are normal. The RTC is committed to getting the MIS to be a valuable management and oversight tool. No similar project requirements have previously been accomplished by the FDIC, FSLIC, FADA or any other agency.		

4. RTC's Responsiveness to Parties Dealing with the Agency		
a) JER Contractor Relationship in Dealing with the Agency	A+	The experience of the J.E. Robert Company, Inc. ("JER") with the RTC is a cooperative and constructive working relationship which is excellent.
b) Buyers Experiences (Including Recent Test Shopping of Various RTC Offices)	A-	We work with the Sales Center personnel continually and it is now working well. We "shopped" the service in various RTC sales centers and were favorably impressed.
c) Qualifications of Staff of Sales Centers	A+	The RTC has hired experienced staff, many of whom are brokers. Service is friendly, courteous and prompt.
Summary and Comparison: The RTC Sales Centers are working quite well now/better than FSLIC or FADA developed nationwide.		
5. RTC's Pricing Policies		
a) Policy re Exposure of Assets to the Market	A+	All assets must be broadly exposed to the market before sale.
b) Use of Appraisals	A/B	Needs review due to system overload.
c) Establishment of Sales Price Using Verifiable Holding Costs	A	Exactly what Receiver should do as well as banks and S&L's with similar troubled assets.
d) The Discount Warehouse Write-Down Policy "20/20/10"	A	Helps identify market level for assets and sale at value established.
e) Seller Financing Comparison with Cash Offers	A	Cash offers are compared on a present value basis with seller financing proposals to see which is best for taxpayers.
6. RTC's Seller Financing Rules		
a) Offering Seller Financing	A	If soundly managed, seller financing is a valid and important tool which the RTC needs to sell its most difficult assets where no valid cash offers are received.
b) Impact on Contractors Motivation to Sell	C-	The 2.0 version of the Asset Management Contract penalizes a contractor for selling with financing.
c) Required Value Comparison to Cash Offer	A	See comment on same question under Pricing Policy
d) Normal Underwriting Requirements for Terms Offer	A	The RTC wants real deals where seller financing is compared with cash offer. So generally a significant down payment and bank type terms are required by policy.
Summary: Final Seller Financing Policies are being developed. Hopefully, 2.0 will be modified to treat properly underwritten seller financed sales as dispositions.		

7. RTC's Appraisal Policies		
a) Qualifications-Certification/Licensed		Designations not yet in place nationwide due to extension for States to enact laws for qualifications.
b) Instructions to Appraisers as to What is Required	A	Very clear and standardized. A model for the workout industry.
c) Elimination of Those Unqualified From Data Base	A	Done as warranted.
d) General Policy of Non Availability of Appraisal to Buyer	A	Opinion of value should not generally be available to prospective buyers.
e) Methods to Establish True Sales Value (net realizable value) and Discount Until Market Value is Determined Through Competitive Offers	A	This is the way to achieve sales at what is the current market price.
f) Requirement for Multiple Appraisals	B	Needs further refinement because of overload of appraisal system. This has been evolving towards more flexibility.
Summary: Appraisal Policy and Practice are working well.		
8. RTC's Handling of Performing Loans		
a) Fully Funded Performing Loans:		
1) Creative methods of maximizing sales value of portfolios;	A	Securitization, segmentation and other Wall Street methods being creatively employed to maximize value.
2) Flexibility to work with borrowers to accelerate voluntary payoff.	A	JER has been given broad authority within approved discount parameters.
b) As to loans Where Funding is Still in Progress or Has Not Started, i.e., Construction Loans in Progress and Unfunded Loan Commitments:		
1) Proper use of FIRREA to repudiate "burdensome" future funding obligations;	A+	Skillful use of FIRREA power to repudiate is very important where its exercise will minimize additional losses and disbursements of needed cash. This is done in conjunction with Counsel.
2) Effort to work with developer as to an intelligent solution once repudiation occurs.	A	The effort is to create a win/win settlement with the borrower under the revised circumstances of the lender being insolvent and having the legal right to cancel its future performance.
Conclusion: When compared to the universe of troubled financial institutions and other government agencies (past and present) holding, managing and recovering on troubled assets, RTC gets a strong grade for great accomplishment under extraordinarily difficult circumstances.		

Senator DIXON. I thank you, Mr. Crocker.

I advise all witnesses I am going to have to leave for a minute to vote.

I am almost compelled to comment that your grades are very high, Mr. Crocker, and don't compare very favorably with the evaluation made by Charlie Bowsher, our Comptroller General. One of you is about three grades off. You're giving them pretty steady A's and he's giving them pretty steady D's.

Mr. CROCKER. Senator, can I respond?

Senator DIXON. But if you would be kind enough to wait until we get to the question and answer period, I would be delighted to develop that with you.

When you talk about pricing policies all A's and appraisal policies all A's, none of the other testimony I have ever heard gives them A's. But I sure will develop that with you and give you an opportunity.

I understand that you work for them and that can influence judgment a little.

But if you will all excuse me to go vote, I will be back here in a moment and then we will proceed, of course. And I apologize for the necessity to go, but I will be very quick.

Mr. CROCKER. Thank you. [Recess.]

Senator BOND. We will reconvene the hearing. Senator Dixon has gone to vote and he has asked that, in his absence, I ask Mr. Cannon to proceed and we will get back into the business.

Mr. Cannon.

STATEMENT OF MICHAEL CANNON, AREEA, INC., MIAMI, FL

Mr. CANNON. Thank you for extending me the invitation to testify before the subcommittee at its oversight hearing on real estate asset disposition activities of the Resolution Trust Corporation.

My name is Michael Y. Cannon. I am president of the affiliated firms known as AREEA, A-R-E-E-A. I have been practicing real estate appraisal, market analysis, real estate consulting for the past 31 years. I hold the professional appraisal designations of MAI, SRA, CRE, American Society of Real Estate Counselors. My affiliated firms are an investment advisory firm for an offshore-based real estate investor and we also manage real estate, commercial properties for their portfolio, which is in several hundreds of millions of dollars throughout the United States.

Our firm publishes the statistics on real estate activities in south Florida, and I write a weekly column for the Miami Herald on real estate activities.

I have been retained on various occasions by other Government agencies, including the U.S. Attorney's Office, the FBI, and other agencies in connection with criminal activities relating to real estate in association with Charles Kimball economic advisers.

You have asked me to provide the committee with suggestions on how the RTC might improve its performance in critical areas, of which I have examples and knowledge of. Basically, our firm has been retained as contractors for the RTC on various matters dealing with most complex properties as well as residential single family homes.

Basically the problem that we have observed is that the RTC system, being a public entity and a public agency, is bogged down in the bureaucratic process which has eliminated the ability and flexibility of the individuals to perform entrepreneurial decision-making processes on a case-by-case basis.

It is my opinion that the policy statement of the RTC is basically clear and precise in its mandated objectives. I and others have observed that because the RTC is that Government agency and not a quasi-Government agency, as its predecessors were, it must adhere to the political and unfortunate bureaucratic process related to its mandated objectives.

The RTC is competing with other sellers in real estate, including the FDIC, commercial banks, solvent savings and loans, life insurance companies, pension funds, and other investors to attract buyers for real estate that they have on the market. Competition is very keen because there are more sellers today than there are buyers, an example of which is the CenTrust Towers building in Miami.

I brought a graph with me on the right which indicates and reflects that that has been a high-profile property marketed by the RTC where various cash offers have been delivered and the problem appears that the RTC is dealing on a moral basis with an individual company. And when those negotiations cease then they go to the second bidder. In dealings with real estate, the seller should deal with all players simultaneously.

It appears that because of the complex procedures that are involved, the attempt to standardize documentation, and the close bidding process that the RTC has, that it discourages prominent investors to seek out properties and purchase them. Our foreign investors that we represent are on the sidelines and they are not representing any interest in U.S. real estate at this time because of that matter, especially the RTC.

This, coupled with the sometimes political influence may have resulted in unqualified individuals internally and externally providing unsatisfactory advice relating to the disposition of assets. It has also been observed that those highly qualified consulting contractors for various professional services are not being properly utilized or shying away from providing professional services to the RTC. These individuals and firms are being replaced by lesser qualified firms and individuals who may be taking advantage of the system, possibly for self-gain.

In summary, to simplify how the RTC could improve its performance, it is my opinion that simplifying its procedures by eliminating unnecessary and duplicative paperwork, both in its professional contract services as well as their attempt to standardize purchase and sale agreements. The RTC could improve its performance by delegating authority to individuals responsible in the disposition process with monetary incentives as well as psychological incentives, realigning real estate assets by locale rather than by institution.

Outside independent asset management contracts should have local offices and not be scattered throughout the United States. Buyers prefer to deal with people on a face-to-face basis and not by long distance phone calls.

Utilizing the professional contractor; i.e., the appraiser, the accountant, the manager, the attorney, and the auditor, as a team assisting the asset manager rather than on an individual basis. Not providing seller financing but soliciting financing from solvent banks and savings and loans. It is my opinion the FDIC and the OTS would best serve as a supervisor rather than an implementor. Government is equipped to insure and regulate. Government should not be a lender on a direct basis.

Categorizing and classifying, identifying marketing and advertising real estate acquired by location through the knowledgeable and preferably local brokers and managers rather than the current national pig-in-the-poke system.

The last point, sir, is dealing with all potential buyers on a simultaneous basis and remove the current moral commitment and self-imposed disposition deadlines. An example could be the CenTrust Towers where it was reported that cash buyers were not allowed to discuss their offers in detail until the discussions ceased with prior interested parties. In real estate, a deal is not a deal until a contract is signed, delivered, and accepted. A cash offer at a reasonable price should always be addressed, even if another offered price is higher but contingent upon creative purchase money cash-flow mortgages.

I am honored to have the opportunity to provide the committee with my observations and comments. It is unfortunate that the time allocated to these issues is restricted.

I will be happy to answer any questions.

[The complete statement of Michael Cannon follows:]

AREEA INVESTMENT ADVISORY SERVICES, INC.
Licensed Real Estate Brokers

Please reply to Ext. _____

June 19, 1991

The Honorable Alan J. Dixon, Chairman
Subcommittee on Consumer and Regulatory Affairs
United States Senate
Committee on Banking, Housing, and Urban Affairs
Washington, DC

Mr. Chairman:

Thank you for extending me the invitation to testify before the Subcommittee at its Oversight Hearing on Real Estate Asset Disposition Activities of the Resolution Trust Corporation (RTC).

My name is Michael Y. Cannon. I have been practicing real estate analyses, valuation, consulting, and finance for the past (31) years. I hold the following professional appraisal and consulting designations:

MAI and SRA - Member of the Appraisal Institute
CRE - American Society of Real Estate Counselors
SMC - Senior Mortgage Consultant

I am president of a group of affiliated firms under the acronym "AREEA" based in Miami, Florida. These affiliated firms are:

Appraisal and Real Estate Economics Associates, Inc., a real estate consulting, market research, and appraisal/valuation service firm performing analyses on all types of residential and commercial real estate, primarily throughout the state of Florida and nationwide.

AREEA Investment Advisory Services, Inc., an investment advisory firm responsible for the asset management of a several hundred million dollar portfolio of commercial real estate throughout the United States on behalf of a London based foreign investor.

AREEA Investment Managers, Inc., a property management and leasing company performing on and off site management functions for the foreign investor's nationwide portfolio.

AREEA publishes and tracks real property sales activity and statistics covering South Florida's market area in its "AREEA Report for South Florida" in association with Charles E. Kimball, III, economic advisor to AREEA and noted South Florida economic consultant to various government agencies.

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S. Florida Watts 1(800) 273-6373

I have been retained as a real estate appraiser, consultant, and analyst for other government agencies, including the U.S. Attorneys Office, the FBI, and IRS relating to criminal investigations. I have been qualified as an expert witness and have testified in various state and federal courts.

I currently author a weekly real estate column covering real estate activity in South Florida featured in the Miami Herald.

You have requested that my testimony address various areas relating to the RTC's policies and practices in its attempt to dispose of acquired real estate assets, including but not limited to how the RTC might improve its performance in various critical areas, consistency of RTC policies, adequacy of RTC's information system, RTC's responsiveness to parties dealing with the agency, effectiveness of RTC's personnel, RTC's pricing policies including seller financing rules, appraisal policies, and the RTC's handling of performing loans.

You have also requested that I provide the committee with suggestions on how the RTC might improve its performance in these critical areas, and provide examples of which I have knowledge.

I trust that my commentary is received in a professional and constructive manner by those responsible for the awesome task of disposing of the real estate assets in a timely and orderly manner.

Appraisal and Real Estate Economics Associates, Inc., being an approved RTC contractor, has performed numerous residential and commercial appraisal assignments and has been retained as a consultant on certain complex properties.

Independently, AREEA Investment Advisory Service on behalf of its London based client, has been asked to seek information on certain assets it may desire to purchase on a cash basis.

For the record, if our client was interested in a certain RTC asset, AREEA's affiliated appraisal company has and will decline an appraisal/consulting assignment to avoid any conflict of interest.

For example, Centrust Towers, one of the RTC's high profile properties in Miami, drew interest from our foreign investor, and simultaneously received a solicitation to manage the building. We declined the RTC's offer and advised them in writing accordingly.

You have indicated that the Subcommittee is interested in my experiences and insight relating to the RTC's disposition of real estate assets.

It is my opinion that the policy statement of the RTC is basically clear and precise in its mandated objective to analyze, classify, and dispose of assets it acquired. However, one of the basic problems I and others have observed is that because the RTC is a government agency and not a quasi-government agency, it must adhere to the political and the unfortunate bureaucratic process relating to its mandated objectives.

Because the RTC is a public agency replacing the former quasi-public agencies, it appears that more attention is paid to the voluminous coordinating paper process in its procedures, rather than the entrepreneurial and businesslike approach in dealing with real estate matters.

Real estate is unique as compared to other assets and investments. You have to go to it, it can't come to you.

The RTC is competing with other sellers of real estate including the FDIC, commercial banks, solvent savings and loans, life insurance companies, pension funds, other investors, and the private sector to attract buyers.

Whether the asset be a residential home or a complex commercial property, the dealing in real estate sales requires the highest degree of knowledgeable professionals in the structuring of a fair and reasonably priced property transaction.

The major problem is the overwhelming volume of properties acquired by the RTC, where those responsible for analyzing, classifying, and disposing of the real estate may be totally overwhelmed due to the sheer numbers involved. If there are (20) working days in a month, with an asset manager being responsible for (20) assets, thus the asset manager can only spend an average of (1) day per month per property.

It appears that RTC procedures in staffing personnel, delegation of authority and responsibility, the allocation of time, the possible lack of entrepreneurialship in some individuals, and the RTC's marketing methods, have tended to hamstring the RTC's orderly disposition of acquired real estate. Highly qualified individuals who were employed by the RTC and individuals who could be employed by the RTC, have been discouraged due to the unfortunate bureaucratic process.

This, coupled with the sometimes political influences, may have resulted in unqualified individuals internally and externally providing unsatisfactory advise relating to disposition strategies.

It has also been observed that those highly qualified consulting contractors for various professional services are not being properly utilized or are shying away from providing professional services to the RTC. These individuals and firms are being replaced by lessor qualified firms and individuals who may be taking advantage of the system for possible personal gain.

In summation, the RTC would improve its performance by:

- simplifying its procedures by eliminating unnecessary and duplicative paperwork, both in its professional contract services, as well as their attempt to standardize purchase and sale agreements.

- delegating authority to the individuals responsible in the disposition process, with monetary incentives as well as psychological incentives.

- realigning real estate assets by locale rather than by institution. Outside independent asset management contracts should have local offices, and not be scattered throughout the United States. Buyers prefer to deal with people face to face and not by long distance.

- utilizing the professional contractor i.e. appraiser, accountant, manager, attorney, auditor, etc. as a team assisting the asset manager, rather than individually.

- not providing seller financing, but soliciting financing from solvent banks, savings and loans, mortgage bankers, and insurance companies, etc., who are better equipped to provide proper financing in residential and commercial transactions. The FDIC and OTS would be best served as the supervisor, rather than the implementor. Government is equipped to insure and regulate. Government should not be a lender on a direct basis.

- categorizing, classifying, identifying, marketing and advertising real estate assets acquired by location through knowledgeable and preferably local brokers and managers, rather than the current national "pig in the poke" system.

- dealing with all potential buyers on a simultaneous basis, and remove its current moral commitment and self-imposed disposition deadlines. An example could be the Centrust Towers, where it has been reported that cash buyers were not allowed to discuss their offers until discussions ceased with prior interested parties. In real estate, a deal is not a deal until a contract is signed, delivered, and accepted.

  A cash offer at a reasonable price should always be addressed, even if another offer's price is higher but contingent upon a creative purchase money cash flow mortgage. [example: Centrust Towers cash offer vs. negotiated price financed with a cash flow mortgage]

I am honored to have had the opportunity to provide the Committee with my observations and comments. It is unfortunate that the time allotted to address the issues were restricted. I will be happy to answer any questions.

Senator BOND. Thank you very much, Mr. Cannon.

We will, of course, take your entire statement for the record. And, even though I do not have your expertise in real estate, I do understand cash.

Our next witnesses, it will be a joint presentation by R. Miller Hicks and Cecilia Burke.

STATEMENT OF R. MILLER HICKS FOR THE CITIZENS UNITED FOR RESPONSIBLE ECONOMIC DEVELOPMENT OF AUSTIN, TX

Mr. HICKS. Thank you.

I am president of R. Miller Hicks & Co. in Austin. We incorporated in 1957 and have been a licensed security and dealer broker ever since. I am here also in the capacity of representing Citizens United for Responsible Economic Development.

Unlike Marcus Antonius, I do not come before this forum either to bury or to praise. I am not here for a Resolution Trust Corporation bashing day party, nor am I ready to throw out the baby and be left with the muddy water.

To say that the task given the RTC is formidable would be comparable to comparing King Kong with a spider monkey. Property is, in its nature, timid and it seeks protection. And nothing is more gratifying to Government than to become a protector. That was an observation by John C. Calhoun in 1834.

The problem is now held in the public sector. The solution resides in the private one.

Bear with me for a moment.

The plan for the new agency, the Resolution Trust Corporation, in the real world of free markets is about as practical and useful as a gelding in a horse breeding operation. The Government agency must participate in the free market system as if it were a private firm. Most people in Government don't know come here from sick 'em about the real estate field.

The free market will set the price, not appraisers, not cost of asset, not voting public, not rules, politics, or laws, and certainly not Congress.

RTC plans call for selling the property as is. I don't know many folks who buy a pig in a poke.

As much as the Feds love paperwork, they do not have complete file on assets. Financing must be provided. If RTC takes back paper as part of the consideration, it stands a much better chance of recouping a higher value even if it is over time.

The alternative to dumping is warehousing and waiting for the market to come up to appraised value. That assumes it will come up sometime in the future and not stay the same or go down. Coach Darrell Royal replied when asked why he did not pass more often in a football game, he said, three things can happen and two of them are bad.

The flood of real estate held back by the cofferdam of the Government is in itself depressing the market. In the eyes of an institutional investor, there is nothing sexy about a see-through building. Given a chance, a good developer can take a property with the physical appeal of Roseanne Barr and turn it into a Michelle

Pfeiffer. But to pull of this Pygmalion, he has to have a big incentive, an opportunity to acquire for peanuts and sell for pearls.

To make it work, we need local RTC czars who can make fast decisions.

That I wrote in 1989 and it wound up being published on February 27, 1990, as part of the hearing of the U.S. House of Representatives Committee on Ways and Means.

Some things have changed over the ensuing 20 months. The estimate number of failed or failing S&L's has nearly doubled to 1,000 and the cost is nearing $150 billion. RTC has moved $157 billion of good assets with more than that left in tough ones.

One of the main things that needs to be changed that I spoke on earlier is that private enterprise input influence and assistance are vital as the Government enters the killing fields of the free market system.

I'm responding now to some points that Senator Dixon extended in his invitation letter. I have been in contact with many of the 6,000 people of the RTC including those at the top. Some are well motivated and that's somewhat surprising considering their job is likened to a kamikaze, it expires with a successful mission.

Having some experience in contact with the communication field, I approached the CEO of a large cable television system with the idea of purchasing securities from the RTC relating to the cable industry or possibly becoming a workout partner. A call to the national sales center here in Washington told me that even basic data is not now available in the RTC's information system. Sufficient details on many portfolios and properties are simply not available.

Senator Dixon asked for comments, too, on RTC's responsibilities to parties dealing with the agencies. Forty years ago Brooks Atkinson wrote, bureaucracies are designed to perform public business but as soon as bureaucracy is established it develops an autonomous, spiritual life and comes to regard the public as its enemy.

RTC has lost credibility to a significant degree in the private world. The inability to get timely response, sheer frustration of dealing with the Government agency for the first time, lack of decisionmaking authority or will at the contact level, and ever increasing and complicated paperwork contributes to the problem.

Pricing is a product of many factors, again in the Senator's letter. Current market conditions, seller financing terms, tax consequences, competitive opportunities, quality of assets offered, outside potential, availability of willing and able buyers and so forth. There does not seem to be much of a place for the RTC to make a judgment call when setting the price.

The seller financing directive of February 2, 1991, ignores the real world of business. One hundred and forty-five days is not a realistic period to consummate the deal. It is not good for a marriage or a sale.

This typifies the RTC's lack of enthusiasm for seller financing.

Packaging is also a factor in pricing, certainly in portfolios. And there are times when creative packaging can get rid of some of the curs along with the pedigreeds. I am also not adverse to types of joint ventures, equity, and cash-flow participations, and workout agreements with the RTC.

RTC should at least study a loan guarantee program. It would get its money cash up front and provide the banks a safe lending market. But no one answers the solution in all cases. It will take a variety of innovative programs to address the problem.

On the appraisal, that would—could be a session unto itself. Frankly, I don't have much confidence in either the RTC's appraisal or anybody's appraisal for that matter on today's time, because there are simply not comparables available and I go back to the first century when Sirius said, everything is worth what its purchaser will pay for it. I think we're in that situation today.

I believe that the RTC will see the light of 1997 and beyond. With the agency controlling such vast holdings, we're approaching a type of real estate investment super oligopoly.

Together the bureaucrat and the liquidator coupled with the ideas of the entrepreneur and the deal maker can better maximize the net present value return from sale as mandated by FIRREA. And we soon must return the assets to private ownership.

It would be terribly ironic if the oldest democracy in the world did a role reversal with the newest, as the Eastern bloc countries privatize property while we nationalize it. Private property is the vehicle and private enterprise is the engine that drives freedom's course.

Thank you, sir.

[The complete statement of R. Miller Hicks follows:]

R Miller Hicks & Co

since 1957

June 17, 1991

Senator Alan J. Dixon, Chairman
Subcommittee on Consumer and Regulatory Affairs
Committee on Banking, Housing, and Urban Affairs
United States Senate
Washington, D. C. 20510-6075

Dear Senator Dixon:

Thank you for the opportunity to testify before your Subcommittee on Consumer and Regulatory Affairs of the Senate Banking Committee at its oversight hearing on real estate disposition activities of the Resolution Trust Corporation (RTC) on Wednesday, June 19, 1991, at 10:00 A.M. In compliance with the rules of the committee, I am hereby submitting copies of my testimony.

By way of introduction, I am president of R. Miller Hicks & Company, a firm incorporated in 1957, and licensed as both a real estate broker and a securities dealer since that time. The company is registered with the Resolution Trust Corporation and also with Financial Resource Management, Inc. Our TIN is: 74-1294048.

Our heterogeneous real estate experiences have included working in development (one of our projects was the 620,000 s.f. Padre-Staples Mall Shopping Center in Corpus Christi, Texas); in brokerage (i.e., sale of DeVargas Center, Santa Fe, New Mexico, to Weingarten Realty, Inc.); owning and managing our own assets (small office buildings, retail center, and multi-family properties); as a foreign capital investment catalyst (the One American Center office building to Royal Dutch Shell, The Hague, Holland, an $86 million deal); in a consulting capacity (an unusual example was on the Island of Curacao for a client named N. V. Mijnmaatschappij Curaco); et cetra.

Previously I was an officer and part owner of a real estate company and a mortgage banking corporation. In that capacity I marketed loan portfolios to institutional investors. I have also served as president of a mortgage banking professional association.

My experience has taken me into the communication field as chairman of the board and owner of radio stations.

I am no neophyte to the Washington, D. C., scene having served as chairman of a nine-member presidential advisory committee on small business. For a time I was a member of the National Advisory Council to the Small Business

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Administration, Washington, D. C. For over two and one-half years I have followed the activities of various federal agencies involved in the problems of our financial institutions and have written and testified before on the subject.

I look forward to appearing before you and the Subcommittee in the sincere hope that I can be of some assistance.

Very truly yours,

R. Miller Hicks

R. Miller Hicks
President

RMH/nf
Enclosure

R. Miller Hicks
1011 West 11th Street
Austin, Texas 78703
(512) 477-7000

TESTIMONY BEFORE THE SUBCOMMITTEE ON
CONSUMER AND REGULATORY AFFAIRS OF THE SENATE
BANKING COMMITTEE
WEDNESDAY, JUNE 19, 1991

"The plan for the new agency (Resolution Trust Corporation) in the real world of free markets is about as practical and useful as a gelding in a horse breeding operation."

"The government agency must participate in the free market system as if it were a private firm." "Most people in government don't know 'come here from sickum' about the real estate field."

"The free market will set the price--not appraisers, not cost of asset, not voting taxpayers, not rules, politics or laws, and certainly not Congress."

"RTC's plan calls for selling the properties 'as is'. I don't know many folks who buy 'pigs in a poke."

"As much as the feds love paperwork, they do not have complete files on the assets."

"Financing must be provided. If RTC takes back paper as part of the consideration, it stands a much better chance of recouping a higher value even if it is over time."

"Conrad Werkenthin and I were discussing the idea of RTC providing loan guarantees similar to the Small Business Administration's loan program."

"The alternative to dumping is warehousing and waiting for the market to come up to 'appraised value.' That assumes it will come up sometime in the future--not stay the same, or go down. Coach Darrell Royal replied when asked why he did not pass more often in a football game. 'Three things can happen and two of them are bad."

"The flood of real estate being held back by the cofferdam of the government is in itself depressing the market. In the eyes of an institutional investor there is nothing sexy about a see-through building. Given a chance, a good developer can take a property with the physical appeal of a Roseanne Barr and turn it into a Michelle Pfeiffer. But to pull off this pygmalion he has to have a big incentive--an opportunity to acquire for peanuts and sell for pearls."

"To make it work, we need local RTC czars--who can make fast decisions."

I wrote the foregoing, and more, in 1989. It wound up being published on February 27, 1990, as part of the Hearing of the U.S. House of Representatives Committee on Ways and Means (Serial 101-75).

Some things have changed over the ensuing twenty months. The estimated number of failed or failing S&L's has nearly doubled to 1,000, the cost is nearing $150 billion, RTC has moved $157 billion of good assets with more than that of tough ones left to go, and some of the points I noted have been partially adopted. But the unerlying need of the RTC is even more obvious now than then. Private enterprise input, influence, and assistance are vital as the government enters the killing fields of a free market system.

Unlike Marcus Antonius I do not come before this forum to either bury or praise. To say the task given the RTC is formidable would be comparable to calling King Kong a spider monkey. The problem is now held in the public sector, the solution lies in the private one.

I have been in contact with many of the 6,000 RTC personnel, including those at the top. Some are well motivated. That's somewhat surprising considering that their job is likened to a kamikaze--it expires with a successful mission.

As to consistency of RTC policy, on April 29, 1990, we paid $200 to attend a meeting in Houston entitled, "How to Work With the RTC", in an effort to learn its modus operandi. In many ways it is not the same animal today. Changing RTC policies have been both frustrating and costly to private enterprise.

Having some experience and contacts in the communications field, I approached the CEO of a large TV cable system company with the idea of purchasing securities from RTC relating to the cable industry, or possibly becoming a workout partner. A call to the national sales center here in Washington told me that even basic data is not now available in RTC's information system. Sufficient details on many portfolios and properties are simply not in hand.

RTC has lost credibility to a significant degree in the private world. The inability to get timely response, sheer frustration of dealing with a government agency for the first time; lack of decision making authority or will at the contact level; and ever increasing and complicated paperwork contribute to the problem.

Pricing is a product of many factors: current market conditions, seller financing and terms, tax consequences, competitive opportunities, quality of asset offered, upside potential, availability of willing and able buyers, etc. There does not seem to be much of a place for RTC to make a judgment call when setting the price. When it does, it gets shot at.

Before I'd rush to criticize RTC's pricing of the CenTrust Building in Miami at $44 million, reportedly a fourth of the cost, I would weigh a few facts. While I've dealt with heavy investors, I do not know of many with $44 million walking around today actively seeking a home in real estate. The 1986 tax law took away many of the investment appeals in real estate. Without a capital gains tax incentive, real estate cannot compete with other investments, and the stock market soars.

The seller financing directive of February 2, 1991, ignores the real world of business. One hundred forty five days is not a realistic period to consummate the deal. It's not good for a marriage or a sale. This typifies the RTC's lack of enthusiasm for seller financing.

Packaging is also a factor in pricing--certainly of portfolios. The Bright Banc package offered for bid contains a mixed bag from a building in Dallas to a lumberyard in Midland. Apples and oranges. Sometimes an apple buyer is not necessarily going to pay more if you throw in some oranges. That lumberyard may be more trouble than it is worth to mess with. On the other hand, RTC may have other lumberyards that when bunched together could be attractive to a lumber company.

There are times though when creative packaging can get rid of some curs along with the pedigreeds. I am also not adverse to types of joint ventures, equity and cash-flow participations, and workout agreements with the RTC.

RTC should at least study a loan guarantee program. It would get its money in cash up front and provide banks a safe lending market. No one answer is the solution in all cases. It will take a variety of innovative programs to address the problem.

None of the three primary methods to estimate value of property (cost approach, income approach, and market comparison approach) makes sense these days. There is little current construction to generate cost figures. Large vacancies distort income streams, and there is limited property transfer from which to take a market reading. Present day value on optimistic future worth is a dangerous assumption. Anybody's appraisal today is suspect with only the present willing buyer to set actual market value.

RTC, the modern day misanthrope! That's a perception shared by much of the public and supporting horror stories abound. RTC's handling of performing loans is offered as primary evidence. I would rather have a live paper than a dead building.

I believe RTC will see the light of 1997 and beyond. With the agency controlling such vast holdings, we are approaching a type of real estate and investment super obligopoly. Together the bureaucrat and the liquidator, coupled with the ideas of the entrepreneuer and deal-maker, can better "maximize the net present value return from sale---" as mandated by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989. And, we must soon return the assets to private ownership.

It would be terribly ironic if the oldest democracy in the world did a role reversal with the newest, as the Eastern Block countries privatize property while we nationalize it. Private property is the vehicle and private enterprise is the engine that drives freedom's course.

Senator DIXON. Thank you very much, Mr. Hicks.

I thank you all for your testimony. Did you want to make any kind of a contribution at all, Ms. Burke, before we go ahead.

Ms. BURKE. Yes.

Senator DIXON. Be very brief, please, because we have not allocated additional time.

STATEMENT OF CECILIA BURKE FOR THE CITIZENS UNITED FOR RESPONSIBLE ECONOMIC DEVELOPMENT OF AUSTIN, TX

Ms. BURKE. I am also representing Citizens United for Responsible Economic Development, but I also hold an elected office in Texas. I am the Travis County tax assessor/collector.

As you know, property taxes are the main source of revenue for local government and taxes and any policy affecting the payment of taxes or the appraised value of property for tax purposes by a large institutional owner is of concern to local officials as it is to the economic health of our local constituents.

I think in Texas that we are faced with a twofold problem with real estate in that the diversity of the methods used by the various asset managers to attempt to pay taxes has been very unsuccessful. It is a problem for local government and the effect of the erratic marketing strategies and the lack of owner financing has continued to keep prices depressed and that affects the tax base.

So I urge you to make some changes with the RTC.

[The complete statement of Cecilia Burke follows:]

Citizens United for Responsible Economic Development Inc.

Testimony and Background Material

United State Senate
Committee on Banking, Housing, and Urban Affairs
Subcommittee on Consumer and Regulatory Affairs

Presented by

Cecelia Burke
Tax Assessor-Collector
Travis County, Texas

R. Miller Hicks
President
R. Miller Hicks and Company
Austin, Texas

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June 19, 1991

Summary of Testimony of Cecelia Burke and R. Miller Hicks

Effect on Tax Collections and Local Government Budgeting

Cecelia Burke, Tax Assessor-Collector Travis County, Texas

Areas of concern relating to variations of tax payments:

- No Payment
- Timely Payment
- Current year paid timely, prior year not paid
- Current year paid timely, prior year base tax paid
- Accounts paid late, with no penalty and interest
- Accounts paid late, with penalty and interest
- Accounts paid late, with no penalty but interest
- Claims disapproved, then paid with penalty and interest

The uncertainty of RTC policy creates problems for local taxing entities when preparing their budgets and in anticipating cash flow. Taxing entities must have a complete understanding of the methods that will be used by RTC to administer not only current tax payments but delinquent taxes as well.

Another major concern of not only tax assessor-collectors, but appraisal districts as well, is the ability of RTC to bypass all administrative remedies under the Texas Property Tax Code and have prior year values of properties changed. This not only disrupts the fiscal planning of local taxing entities, but will result in irreplaceable loss of anticipated tax revenues even in the unlikely event of 100% collections.

Effect of inconsistent marketing strategies on real property valuation

RTC has shown a tendency to place properties on the market at a set price and then, without warning, withdraw the properties in order to include them in an auction or other special marketing scheme. In many instances the special programs fail to materialize and the properties are eventually returned to the general marketing arena. The uncertainty created by the off-again, on-again marketing of properties causes prospective purchasers to reduce their interest in the properties and ultimately ends up with the properties selling, if at all, for substantially reduced prices. Also, the manner in which "affordable housing" properties are handled contributes to the problem.

Activities which result in decreased prices being obtained for RTC properties directly effects the market value of similar properties and thus reduces the overall market value of the tax base. The use of consistent marketing tactics, including seller financing where appropriate, would enhance the sales of RTC properties and tend to stabilize the tax base.

The RTC practice of announcing prices reduction schedules in advance also tends to lower the price RTC will eventually receive for its properties. As most RTC properties are not "prime" properties, stating there will be a 20% price reduction in 30 days and a 40% reduction in 60 days for properties that do not sell will result in prudent purchasers waiting for the final price reductions before submitting offers. Again, this type of activity results in the reduction in value of similar properties held by the private sector.

Current and Proposed Financing for RTC REO
Modification of Marketing and Contractor Selection Processes

R. Miller Hicks

Financing Proposals

There are several viable suggestions for ways to provide adequate financing for the RTC properties. None of them singly provides a total solution nor a preferential solution. Each, however, provides an acceptable means of disposing of segments of the RTC properties at prices substantially higher than all cash requirements with little, if any, cost to the taxpayer. None of the proposals requires the government to assume any more risk or liability than it already has, and, in many instances, provides for a substantial reduction in risk or liability.

Assume the proposals could generate a 20% increase in the net return to RTC and FDIC. This would result in savings to the taxpayers of between $60 billion and $200 billion.

Citizens United for Responsible Economic Development, Inc., June 14, 1991

The proposed solutions for financing are:

1. Government guaranteed mortgages up to 90% of the loan amount for both owner occupied and investor properties — this would be similar to the existing SBA program but it would not involve SBA except in a very limited number of instances;

2. As a variation on the guaranteed mortgage idea, RTC and FDIC could directly accept paper on the properties, and sell the paper — with partial recourse — to restructured banks and thrifts. (This paper would generally meet Community Reinvestment Act requirements of banks.)

3. Government insured mortgages for 25-30% of the loan amount with a maximum dollar cap. (This would be a program similar to VA and a secondary market for the paper similar to GNMA could be developed);

4. Interest rate subsidized mortgages for owner-occupied low income housing can be provided. The subsidy could be either for full term or partial term depending on the income level of the recipient;

5. Modifications in investor and other loan criteria involving:

(a) The number of loans permissible to a single investor;

(b) The number of properties a single investor can purchase;

(c) The percentage of total assets consisting of investor loans that can be held by a QTL;

(d) Reinstating the FHA investor loan program; and

(e) Permitting rollover or refinancing of mini-perm loans for owner-occupied and investor properties based on borrower ability to pay as opposed to current appraised value of property;

Current RTC Seller Financing Policy

On February 11, 1991, the Resolution Trust Corporation, in compliance with the RTC Oversight Board Policy Statement 15, developed assorted seller financing programs detailed in Circular 10100.8 from Lamar C. Kelly, Jr., Deputy Executive Director of RTC. The circular was allegedly distributed to all Washington, Regional and Consolidated Offices.

The financing guidelines stated they applied to the sale of real estate assets of all conservatorships and receiverships and their controlled real estate subsidiaries. The guidelines contained specific details for the various types of properties held by RTC or entities under its control. In addition, the circular stated that the detailed underwriting guidelines and standards and implementation requirements would be published no later than April 1, 1991.

As of May 28, 1991, the only underwriting standards or implementation procedures which have been generated or distributed involve commercial properties with a value in excess of $500,000. The distribution of this information is apparently very limited as many RTC asset or property managers and resident agents are totally unaware any seller/owner financing is available for RTC assets.

These problems currently exist:

1. Apparently the dissemination of circular 10100.8 was extremely limited or ineffective based on the number of people who should know about the owner financing but state they do not;

2. The RTC Sales Centers state they have no knowledge of how to nor authority to implement financing on anything but commercial properties over $500,000;

3. Most asset managers claim to be unaware any owner financing is available for any properties as per circular 10100.8;

4. If any underwriting and/or procedural guidelines for classes of properties other than $500,000+ commercial assets have been generated, no one is willing to admit having the information;

5. Real Estate Agents, either listing or attempting to sell RTC properties, have been provided with little, if any, information concerning owner financing; and

6. Properties for which little or no private sector financing is available, generally because of property condition, (affordable housing multi-family and 1-4 family units) are not being sold, and in most instances, not even shown because of the lack of owner financing which is now alleged to be in place.

7. RTC Chart 200001\30, dated June 1, 1991 details the "Contract Timetable" for seller financing contracts. RTC specifies a 45 day examination and approval period for the initial submission of a contract involving seller financing. If tentative approval is given to the contract, then RTC has 20 days to deliver a title report and other property documents. Following tentative contract approval and title report, the prospective buyer submits a loan application and fee which RTC then has an additional 45 days to accept or reject. If loan approval is given, then the deal may close in another 30 days. The total time period, and based on RTC's previous track record the minimum time period, from contract submission to closing is 140 days. RTC has the ability during the first 110 days of the process to "shop" the contract and attempt to procure an all cash buyer or another contract on more favorable terms. No sane buyer is going

to be willing to submit a contract on these terms. It is apparent, based on the time frames, the stated duties of buyers and seller, and other conditions of the seller financing contracts that RTC's intent is to discourage submission of contracts involving seller financing.

Marketing Policy and Contractor Selection Procedure

Certainty and consistency are fundamental principles in any effective real estate marketing scheme. RTC's current marketing techniques are generally inconsistent and seem to be designed to create uncertainty. The procedure of shuffling properties from one marketing program to another within a short time frame and alternatively placing properties on the market and then unexpectedly removing them from the market run off many buyers and result in lower prices being offered.

Pricing and the anticipation of price reductions create additional problems. FIRREA mandates sales at no less than 95% of market value. FIRREA does not mandate that market value is equal to the amount of the outstanding loan balance on a property at the time of foreclosure. RTC must realistically determine the current market values of its inventory, price the properties appropriately, and then give the properties a chance on the market at a consistent price within a fixed marketing scheme. Price reduction schemes like the "80-60-50" program virtually guarantee the property will eventually sell for 50% or less of the original asking price. Because of the quality of RTC properties, no buyer in his right mind will offer 100% when the buyer knows 60 or 90 days down the road he can get the property for 50%. Also, consider the way a lender or underwriter will look at a loan approval and compute a loan-to-value ratio with this kind of pricing.

Prompt responses to offers and inquiries coupled with the authority to make binding decisions are expected and required by serious purchasers. RTC must delegate the authority to make final decisions regarding both acceptance of contracts and approval of seller financing proposals.to its employees who are in close geographic proximity to the properties being offered for sale. RTC must be required to make decisions on offers to purchase within time frames normally encountered in the private section.

The asset management contracts for many properties reward the contractor for management and maintenance and penalize him for selling. There is no question that rental properties need competent management and maintenance, however, RTC's objective is to get rid of property and not be a permanent landlord. If the asset manager is given the opportunity to make more money by the selling property than managing it, there will be sufficient incentive to market the asset aggressively.

Finally, the contractor qualification and selection processes require modification to permit both a larger number of competent individuals to become approved contractors and to streamline and shorten the actual selection of specific individuals for asset disposition.

Cecelia Burke Testimony for 6/19/91

I am Cecelia Burke, Travis County Texas Tax Assessor-Collector. My office is an elected office and in addition to my duties as Voter Registrar and titling and licensing Travis County vehicles, my office collects property taxes for 68 taxing jurisdictions. This includes the County, schools, cities and a variety of special districts.

Property taxes in Texas are the main source of revenue for local governments. Any policy affecting the payment of taxes or the appraisal value of property for tax purposes by a large institutional owner is of concern to local officials and to our constituents.

I represent today Citizens United for Responsible Economic Development, Inc. This group is a non-profit, non-partisan corporation formed in November 1989 by a diverse group of Austin and Central Texas small business people and other citizens who are concerned with financial and economic problems facing Texas caused by the failure of multiple financial institutions. The purpose of CURED is to develop and promote practical solutions to these problems existing in our state.

We in Texas are faced with a two-fold problem with real estate: (1) the diversity of methods used by various asset managers in paying property taxes of the FDIC and RTC owned properties; and (2) the effect of erratic marketing strategies on property valuation.

Variations of Tax Payments

Areas of concern relating to variations of payments include:

- No Payment
- Timely Payment
- Current year paid timely, prior year not paid
- Current year paid timely, prior year base tax paid
- Accounts paid late, with no penalty and interest
- Accounts paid late, with penalty and interest
- Accounts paid late, with no penalty but interest
- Claims disapproved, then paid with penalty and interest

The uncertainty of RTC policy creates problems for local taxing entities when preparing their budgets and in anticipating cash flow. Taxing entities must have complete understanding of the methods that will be used by the RTC to administer not only current tax payments but also delinquent taxes.

Another major concern, not only of tax assessor-collectors but also appraisal districts, is the ability of RTC to bypass all administrative remedies under the Texas Property Tax Code and have property valuations of prior years changed. This disrupts fiscal planning of local taxing entities and results in irreplaceable loss of anticipated tax revenues even in the unlikely event of 100 percent collections.

The RTC recently issued a proposed policy regarding the payment of state and local property taxes dated May 23, 1991. It states:

> "E. Challenges to Assessments.
>
> In the exercise of its business judgment, the Corporation may challenge assessments which do not conform with the statutory provisions, and during the challenge will generally pay tax claims based on the assessment level deemed appropriate. The Corporation will generally limit challenges to the current and immediately preceding taxable years and to the pursuit of previously filed tax protests. However, the Corporation may, in the exercise of its business judgment, challenge any prior taxes and assessments provided that (1) the Corporation's records (including appraisals, offers or bids received for the purchase of the property, etc.) indicate that the assessed value is clearly excessive, (2) a successful challenge will result in a substantial savings to the Corporation, (3) the challenge will not unduly delay the sale of the property, and (4) there is a reasonable likelihood of a successful challenge."

The policy statement outlining challenges to assessments does not follow Texas law. We encourage the Corporation to "challenge an assessment under the procedures available under state law," (§41.12 and §41.44 et seq. Texas Tax Code) when the Corporation believes there is something flawed about the assessment. However, the Corporation must act like any other taxpayer and not go outside the bounds of the law. The language in this paragraph runs counter to

this intent and should be stricken or it should be made clear that where statutory procedures are in place to protest an assessment, they must be followed.

Furthermore, this kind of challenge would be tried in Federal Court. This increases the cost to both the Federal and local governments for litigation. I question whether our common constituents, i.e. the people who put us in office, really want their tax dollars spent on more and more attorney's fees.

Effect of Inconsistent Marketing Strategies on Real Property Valuation

RTC has shown a tendency to place properties on the market at a set price and then, without warning, withdraw the properties in order to include them in an auction or other special marketing scheme. In many instances the special programs fail to materialize and the properties are eventually returned to the general marketing arena. The uncertainty created by the off-again, on-again marketing of properties causes prospective purchasers to reduce their interest in the properties and ultimately ends up with the properties selling, if an all, for substantially reduced prices. Also, the manner in which "affordable housing" properties are handled contributes to the problem.

Two specific procedures significantly contribute to the problem with the "affordable housing program": (1) the use of a "bidding" process; and (2) the failure to implement the seller financing program as set out in RTC Circular 10100.8.

A substantial number of the subject properties are low dollar units in need of repair. Prospective buyers are either unsophisticated low income buyers or slumlords. Based on the RTC Oversight Board policy statements, it appears the primary objective of RTC is to place the properties in the hands of low income families. Because of the unfamiliarity of the target buyers with real estate transactions, it is extremely difficult for a real estate agent or RTC employee to explain to them the bidding process, why they should fill out loan applications, and then tell the prospective buyers that they may or may not be able to purchase a specific property because of the process.

The process presents economic problems to real estate agents dealing with the properties. Low dollar properties generate small commissions. Even to most dedicated agents cannot afford to continually assist prospective buyers in examining properties and complying with the required paperwork when there is no certainty any deal, regardless of the bid price and the qualification of the buyer, will be consummated.

It would make more sense and perhaps generate higher prices to offer the properties to qualified low income buyers on a first come, first served basis. The certainty of being able to purchase the property when a qualified buyer fills out a contract and loan application documents would greatly increase the number of sales and would motivate real estate agents to move the properties.

The RTC has promulgated "owner" financing programs for the affordable housing program. However, RTC does not appear to be implementing the programs. Properly underwritten affordable housing paper, with partial recourse could be immediately sold to local banks and generate instant cash for RTC. Most of the paper would also qualify as loans which would satisfy the banks' Community Reinvestment Act obligations.

Activities which result in decreased prices being obtained for RTC properties directly effect the market value of similar properties and thus reduce the overall market value of the tax base. The use of consistent marketing tactics, including seller financing where appropriate, would enhance the sale of RTC properties and tend to stabilize the tax base.

The RTC practice of announcing price reduction schedules in advance, except for its prime properties, results in RTC ultimately receiving substantially lower prices for its properties. As most RTC properties are not "prime" properties, stating there will be a 20 percent price reduction in 30 days and a 40 percent reduction in 60 days for properties that do not sell seems to be designed to encourage prudent investors to wait for the final price reduction before submitting offers. The "80-60-50" program described above should be terminated immediately as its only effect is to guarantee lower prices received for the properties. This type of activity also results in the reduction in value of similar properties held by the private sector.

A good example of this involves the Ashton Green Condominiums in Austin. Prices on these units fell from $90-95 thousand in 1985 and appeared to stabilize at between $55-60 thousand in 1990. RTC offered its inventory in the project under the affordable housing program and began cutting prices as low as $30 thousand because the properties would not move. It is common knowledge there is no private sector financing for condominiums in Texas and RTC did not offer owner financing. The result of the RTC marketing tactics is the market value for all of the privately owned units in the project is now $30-40 thousand. The local taxing entities suffer a 30-35% reduction in revenues because of RTC policy on the entire project.

The current marketing strategies or lack thereof potentially could create another downward spiral. The effect eventually will be to drive market prices down and cause properties currently owned by private sector owners to decrease in value. Ultimately, their loan to value ratio is out of whack and will result in yet another round of foreclosure. In the example above, the tax appraisal values and the market values of the privately owned units are generally $20-30 thousand per unit below the outstanding loan balances in 1991.

RTC was created to provide a mechanism to dispose of failed thrifts and their assets. Although RTC is a government corporation, it is in the real estate and mortgage brokerage business and needs to conduct business as a private sector corporation. Any large institutional owner of property would recognize these real estate principles:

1. An MAI appraisal or any appraisal performed in accordance with the Uniform Standards of Professional Appraisal Practice is but one step in determining the market value of a property offered for sale.
2. The cost and availability of financing is another major factor in determining market value and the ability of the owner to actually sell the property.
3. Any reasonable offer on a property offered for sale should be responded to immediately. (Note the 45 day contract review period recently published by RTC on seller financed properties)
4. Properties sell for less in a cash deal and for more if financing is used. (Traditionally, real estate transactions, other than distress sales, involve financing)
5. Property does not decline in market value in direct relation to time amount of time it is on the market.
6. The quicker a reasonable offer is responded to, the quicker the closing and the smaller the enormous cost of holding the property.

Every real estate professional in Texas is licensed by the state. Real Estate Licensees learn these principles through required education programs.

Everything I have enumerated above is consistently ignored by the RTC. They and the FDIC are the largest property owners in the United States. Both organizations display these basic tendencies:

1. Never hire anyone with real estate marketing experience
2. Never display any sense of economic responsibility.
3. Don't read FIRREA — particularly its stated purpose.
4. Dump the properties with no regard for the local economy or the well being of the community.

Ladies and gentlemen, we do our constituents a grave disservice and untold economic harm by letting this continue. I urge you to act now. Act professionally and in a business-like manner. It's good politics and it's good common sense.

Testimony of R. Miller Hicks
Senate Committe on Banking, Housing, and Urban Affairs
Subcommittee on Consumer and Regulatory Affairs
June 19, 1991

I am R. Miller Hicks, President of R. Miller Hicks and Company of Austin, Texas. My firm has operated as a real estate broker and securities dealer in a wide variety of business development and consulting activities since 1957. I have served as chairman of a presidential advisory committee on business appointed by President Regan and have been a member of the National Advisory Council of the Small Business Administration. I am also registered as an RTC contractor.

I am here today representing Citizens United for Responsible Economic Development, Inc. This group is a non-profit, non-partisan corporation formed in November 1989 by a diverse group of Austin and Central Texas small business people and other citizens who are concerned with financial and economic problems facing Texas caused by the failure of multiple financial institutions. The purpose of CURED is to develop and promote practical solutions to these problems existing in our state.

The purpose of my testimony is not to recite a litany of defects and shortcomings of the Resolution Trust Corporation but to define the fundamental problems encountered by RTC in dealing with its real estate portfolio and present positive, effective solutions to these problems.

The two primary problems underlying the inability of RTC to move its real estate are the lack of understanding of marketing techniques and the unavailability of financing. While most of the RTC employees are competent banking regulators and liquidators, few, if any, have any experience or expertise in marketing and selling real estate. It is a fundamental axiom in the private sector, but not recognized by RTC, that nearly all real estate sales at "market value" customarily involve financing. Cash only sales are usually interpreted by the private sector as distress sales or involve properties with serious problems.

Financing for commercial and multi-family properties is virtually impossible to obtain through traditional channels by the average prospective buyer or investor. The banking system has been badly burned by non-performing real estate loans made in the early and middle eighties. As a consequence, both bankers and banking regulators have overreacted in their perception and attitude towards any loan collateralized by real estate. In the states where RTC has the bulk of its real estate inventory, the banks and thrifts are either unwilling or unable to finance real estate transactions on terms and conditions acceptable to a prudent investor. Therefore prospective purchasers of RTC assets are unable to obtain the financing necessary to buy the properties at anywhere near current market values or the RTC asking prices.

The solution to the financing problem is deceptively simple and involves little, if any risk to RTC and, in particular, the taxpayer. RTC and the Congress must take the necessary steps to provide some form of incentive to ensure the availability of financing for RTC REO.

Financing Proposals

There are several viable suggestions for ways to provide adequate financing for the RTC properties. None of them singly provides a total solution nor a preferential solution. Each, however, provides an acceptable means of disposing of segments of the RTC properties at prices substantially higher than all cash requirements with little, if any, cost to the taxpayer. None of the proposals requires the government to assume any more risk or liability than it already has, and, in many instances, provides for a substantial reduction in risk or liability. Consider that RTC estimates the holding cost for REO to be 15-18% annually. The savings in holding cost creating by moving the property rapidly with financing incentives would more than offset any possible loss incurred by defaults on guaranteed or insured loans.

Assume the proposals could generate a 20% increase in the net return to RTC and FDIC. This would result in savings to the taxpayers of between $60 billion and $200 billion.

The proposed solutions for financing are:

1. Government guaranteed mortgages up to 90% of the loan amount for both owner occupied and investor properties — this would be similar to the existing SBA program but it would not involve SBA except in a very limited number of instances (a detailed explanation of this program is contained in the attached background materials);

2. As a variation on the guaranteed mortgage idea, RTC and FDIC should provide seller financing on appropriate properties, and sell the paper — with partial or full recourse — to banks and thrifts. (This paper would generally meet Community Reinvestment Act requirements of banks.)

3. Government insured mortgages for 10-30% of the loan amount with a maximum dollar cap. (This would be a program similar to VA and a secondary market for the paper similar to GNMA could be developed);

4. Interest rate subsidized mortgages for owner-occupied low income housing can be provided. (RTC Circular 10100.8 alludes to this but the program has not been implemented.) The subsidy could be either for full term or partial term depending on the income level of the recipient;

5. Modifications in investor and other loan criteria involving:

(a) The number of loans permissible to a single investor;

(b) The number of properties a single investor can purchase;

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(d) Reinstating the FHA investor loan program; and

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As of June 12, 1991, the only underwriting standards or implementation procedures which have been generated or distributed involve commercial properties with a value in excess of $500,000. The distribution of this information is apparently very limited as many RTC asset or property managers and resident agents are totally unaware any seller/owner financing is available for RTC assets. (a more detailed analysis of the RTC progress is contained in the attached background materials)

I would like to point out an example of why the public has the perception the RTC is not serious about implementing the seller financing program. On June 1, 1991, RTC published and distributed Chart 200001\30 setting out a timetable for acceptance and consummation of RTC seller financed contracts. The timetable provides for an average 140 day period for RTC to process the paperwork starting with an initial 45 day review period for the contract prior to any consideration of a loan application, environmental due diligence assessments, or title report. No serious buyer is going to be willing to submit a contract with these excessively long time frames for RTC to make decisions which could and should be made within two to five working days.

This type of procedure is not only indicative of a financing problem but also provides direct evidence that RTC simply does not understand the necessary requirement of a timely response to offers as an effective marketing tool. Prompt responses, whether yes or no, are an essential ingredient to efficient and profitable real estate transactions.

Marketing Strategies and Techniques

L. William Seidman has publicly stated as recently as June 13, 1991 that RTC does not possess the necessary marketing skills and expertise within its organization to effectively sell real estate assets. Also on June 13, Seidman stated that RTC had solved this problem by its use of private sector contractors. Obviously, the results of RTC attempts at marketing properties indicates the problem is not solved.

The marketing problem can be broken down into five specific areas:

1. Lack of familiarity and expertise in dealing in retail real estate sales and management;
2. Contractor Qualification Criteria and Selection Procedures;
3. Unwillingness and/or inability to make decisions and timely respond to offers to purchase or inquiries about specific assets;
4. Inconsistent offering and pricing of properties for sale; and
5. The built-in bias in asset management contracts which encourages management and discourages sales, i.e. most property management contracts are structured so that it is more profitable to manage and maintain property rather than to aggressively attempt to sell the property.

There are several relatively simple solutions which would vastly improve RTC's ability to move property:

First, prompt and decisive replies to offer to purchase are imperative to effective sale of real property. Indecisiveness and dilatory responses create uncertainty and will drive prospective purchasers away like the plague. Accurate information and data on each and every marketable property is necessary. Two-year old computer printouts of rent rolls are not adequate for a buyer to make a decision to purchase an apartment complex. The people who are busy creating and continually revising the two-pound Asset Management and Disposition Agreements would be better employed collecting and disseminating current, accurate date on properties.

Second, I fully concur with the principle set out in FIRREA that those individuals and firms who have been guilty of criminal activity or have defrauded federally insured financial institutions should be prohibited from contracting with or otherwise profiting from RTC. However, RTC staff in developing its rules (12 CFR §1606.5) has excessively expanded the statutory mandate for automatic disqualification of individuals and businesses from dealing with RTC. The result is any individual or firm who has defaulted on a loan or caused a loss to a federally insured financial institution is barred from being a contractor or subcontractor. Most of these people are not crooks nor have they committed fraud. They simply have been the victims of poor business conditions.

Many real estate brokers who are precluded from contracting with RTC because of the "defalcation" interpretation are the very individuals who should be selling RTC properties. These people are the risk-takers and are inclined to aggressively pursue whatever activity they engage in. (A more detailed examination of the qualification criteria is included in the attached background material.)

In connection with the contractor selection process, the SOS (Solicitation of Services) procedure has become almost ludicrous. I would refer you to Version 2.0 of the RTC Standard Asset Management and Disposition Agreement published April 10, 1991. The document, along with supporting exhibits and data, is virtually incomprehensible to even sophisticated business people. The average real estate broker or property manager will simply throw up his or her hands and fail to respond to the SOS. I would ask any member of this committee to examine Article XI of the agreement dealing with the contractor's compensation and explain how much money the contractor will make and when it will be paid on any specific asset package.

Two or so pounds of paper work is excessive in order to submit a bid on most asset packages and results in far fewer individuals or firms being willing to engage in the process. In most instances relating to real estate, a Request for Proposal or a standard listing and property management contract should be all that is necessary to accomplish the objective. Also, the asset packages should be broken down into homogeneous properties by geographic area and awarded to entities that specialize in the specific property types. Smaller asset packages, more widely distributed throughout the real estate community, will vastly increase sales performance.

Third, someone, somewhere within the RTC must be given the authority to make decisions or accept responsibility for each and every asset held by the corporation. If the RTC employees are as competent and trustworthy as Mr. Seidman states, then there should be no problem in delegating authority to employees to make final decisions on assets. It would seem that the RTC employee in the geographic area where an asset is located should have the authority to dispose of the asset except under the most unusual circumstances.

The problem with RTC is not its spaghetti bowl organization chart but the unwillingness of any RTC employee to delegate authority or accept responsibility for making decisions. They all appear to be so paranoid about making a mistake that they avoid decisions for fear that someone will criticize them. The organization chart is merely a smoke screen for RTC to hide behind in order to avoid making a decision.

Fourth, the property inventories available at RTC Sales Centers are a cruel joke. In looking at the inventories, a buyer or real estate broker is unable to determine whether or not a property is actually for sale. RTC has consistently offered properties on the market for a suggested price and then, just as a contract is being prepared, removes the property from the market to include it in some special sales or auction scheme. A broker submitting a contract is told "we can't take the contract because the property is being auctioned." One then obtains a list of properties being auctioned and prepares to go to the auction. Immediately prior to the auction, you discover certain properties suddenly are being pulled from the process to be sold under another program. The uncertainty of the availability of a property under a specific program tends to make serious buyers look elsewhere for real estate.

Pricing and the anticipation of price reductions create additional problems. FIRREA mandates sales at no less than 95% of market value. FIRREA does not mandate that market value is equal to the amount of the outstanding loan balance on a property at the time of foreclosure. RTC must realistically determine the current market values of its inventory, price the properties appropriately, and then give the properties a chance on the market at a consistent price within a fixed marketing scheme. Price reduction schemes like the "80-60-50" program virtually guarantee the property will eventually sell for 50% or less of the original asking price. Because of the quality of RTC properties, no buyer in his right mind will offer 100% when the buyer knows 60 or 90 days down the road he can get the property for 50%. Also, consider the way a lender or underwriter will look at a loan approval and compute a loan-to-value ratio with this kind of pricing.

Fifth, the asset management contracts for many properties reward the contractor for management and maintenance and penalize him for selling. There is no question that rental properties need competent management and maintenance, however, RTC's objective is to get rid of property and not be a permanent landlord. If the asset manager is given the opportunity to make more money by the selling property than managing it, there will be sufficient incentive to market the asset aggressively. (In the attached background data is an example of this specific problem where the asset manager obviously does not want to sell the property because he loses his income.)

Summary

I believe the key to implementing the stated purpose of FIRREA with respect to real estate owned or controlled by the Resolution Trust Corporation lies in the development of the usual and customary financing for the assets and use of aggressive private sector professionals to market the properties. The availability of financing, whether seller financing or third party financing, will result in properties selling quicker and for higher prices. Because of the reluctance of the banking industry to finance many real estate transactions, some form of loan guarantee or insurance (full or partial) is necessary to induce private sector lenders to participate in financing RTC properties.

Certainty and consistency are fundamental principles in any effective real estate marketing scheme. RTC's current marketing techniques are generally inconsistent and seem to be designed to create uncertainty. The procedure of shuffling properties from one marketing program to another within a short time frame and alternatively placing properties on the market and then unexpectedly removing them from the market run off many buyers and result in lower prices being offered.

Prompt responses to offers and inquiries coupled with the authority to make binding decisions are expected and required by serious purchasers. RTC must delegate the authority to make final decisions regarding both acceptance of contracts and approval of seller financing proposals.to its employees who are in close geographic proximity to the properties being offered for sale. RTC must be required to make decisions on offers to purchase within time frames normally encountered in the private section.

Finally, the contractor qualification and selection processes require modification to permit both a larger number of competent individuals to become approved contractors and to streamline and shorten the actual selection of specific individuals for asset disposition.

Background Material and Supporting Data

CURED Position Paper Number One: Financing REO's

CURED Position Paper Number Three: Contractor Standards

CURED Analysis of Current RTC Seller Financing Programs

RTC Guaranteed Loan Program: Suggested Guidelines

Examples of RTC related real estate transactions

Citizens United for Responsible Economic Development, Inc.
Position Paper Number One
January 31, 1991
Financing of RTC Real Estate Owned

Citizens United for Responsible Economic Development, Inc. has developed several methods for resolving a substantial portion of the RTC and FDIC real estate inventory problem. There is no single magic bullet which will immediately eliminate the REO problem. Regardless of realistic solutions proposed for the problem, resolving REO's is only a small portion of the predicament involved with RTC and FDIC.

Because of the sheer magnitude of the properties held by RTC and FDIC, one tends to let Real Estate Owned dominate both the discussion of and solutions for the current banking crisis. There are other equally important matters, specifically appraisals and commercial credit, that must be addressed in attempting to arrive at workable solutions.

We believe that the concepts developed by CURED are both practical and involve the least cost to the taxpayer. We also feel that it is virtually impossible to separate the financing solution from appraisal functions. Any financing proposal that causes a liquidity drain on commercial banks creating a shortage of funds for short term business lending, would be counter-productive.

REO's Particularly

In dealing with the RTC and FDIC REO's specifically, it is necessary to quantify and segregate the various aspects of the puzzle. There is general agreement, regardless of the time frame involved in liquidating the REO's, that some form of federally assisted financing will be required. A second problem, which may be more serious, is that neither RTC nor FDIC necessarily know what they own, nor are they able to accurately evaluate the properties. With many more properties than either agency would care to admit, there are problems with lost files, unrecorded instruments, unpaid taxes and insurance, outstanding superior liens, pending litigation and other title related matters. Notwithstanding the above, the values placed on many properties have been determined by smoke and mirrors, crystal balls, and dart boards. In fairness to the agencies, time and adequate staffing can remedy many of these things.

RTC estimates they have $170 billion in myriad assets, however, it could be as much as $300 billion. Among these assets are at least 30,000 pieces of real estate. They also estimate they will acquire another 100-200 thrifts in the next year or so. This could double the amount of assets held by RTC. FDIC does not release its figures. However, the word on the street is they are holding as much, if not more, than RTC. The closest guess as to the actual magnitude of the problem is between $300 billion and $1 trillion. The basic question is "do the taxpayers pick-up the lion's share of the tab or do the agencies act in a responsible manner and let the assets pay for themselves?"

In addition to the assorted legal and administrative hurdles relating to the properties, a substantial number are virtually worthless as compared to the loans collateralized by them. In this category of properties you have the following:

1. Projects that were ill-conceived and designed from their inception. There is not much that can be done with them other than "scrape" the property and sell the raw land;
2. There are properties where the rehabilitation or renovation cost would exceed the fair market value of the property in pristine condition. Again, scraping to raw land is probably the best solution;
3. There are projects that are physically in good condition but for which there is no current market; e.g. generally incomplete subdivisions, office space and retail space. There is, however, a reasonable expectation that the projects will be economically viable in the future. On these properties, one must weigh the holding costs — taxes, insurance, maintenance, etc., — versus the future market value. It may be cheaper to sell these properties at a substantial discount rather than hold them; and
4. Properties where there is a current market, but, due to the nature, location, and condition of the properties, prospective owners and some of the properties are unable to obtain or qualify for adequate financing. These property generally include lower end single and multi-family residences. Possible solutions involve subsidized financing for owner-occupied properties and a change in investor borrowing criteria for investment properties.

The entire object of the exercise should be to maximize the return to the taxpayer and minimize the cost. Insistence on "cash only" transactions, regardless of the length of the time frame involved, will not cut it. In the first place, cash only will result in lower prices being offered across the board. Second, it will drain capital from other, more productive, uses which will have a detrimental effect on the rest of the economy. Third, it will cause the market values of other property to decrease resulting in more foreclosures, bank failures and, eventually, more REO's for RTC and FDIC.

Workable Solutions

There are several viable suggestions for ways to provide adequate financing for the RTC properties. None of them singly provides a total solution nor a preferential solution. Each, however, provides an acceptable means of disposing of segments of the RTC properties at prices substantially higher than all cash requirements with little, if any, cost to the taxpayer. None of the proposals requires the government to assume any more risk or liability than it already has, and, in many instances, provides for a substantial reduction in risk or liability.

Assume the proposals could generate a 20% increase in the net return to RTC and FDIC. This would result in savings to the taxpayers of between $60 billion and $200 billion.

The proposed solutions for financing are:

1. Government guaranteed mortgages up to 90% of the loan amount for both owner occupied and investor properties — this would be similar to the existing SBA program but it would not involve SBA except in a very limited number of instances;

2. As a variation on the guaranteed mortgage idea, RTC and FDIC could directly seller finance the properties, and sell the paper — with full or partial recourse — to banks and thrifts.

3. Government insured mortgages for 25-30% of the loan amount with a maximum dollar cap. (This would be a program similar to VA and a secondary market for the paper similar to GNMA could bedeveloped);

4. Interest rate subsidized mortgages for owner-occupied low income housing can be provided. The subsidy could be either for full term or partial term depending on the income level of the recipient;

5. Modifications in investor and other loan criteria involving:

(a) The number of loans permissible to a single investor;

(b) The number of properties a single investor can purchase;

(c) The percentage of total assets consisting of investor loans that can be held by a QTL;

(d) Reinstating the FHA investor loan program; and

(e) Permitting rollover or refinancing of mini-perm loans for owner-occupied and investor properties based on borrower ability to pay as opposed to current appraised value of property;

6. Placing government deposits in selected banks and thrifts to promote liquidity where desirable.

Related solutions in addition to providing means to obtain financing:

1. The 1986 tax law should be revised to permit real estate investors, at the least, to be able to deduct from any income all out-of-pocket cash expenses plus reasonable depreciation;

2. The 12% limit on commercial loans by QTL's should be modified;

3. The limit on loans to a single investor should be changed specifically with respect to an investor dealing with multiple institutions;

4. Establish realistic underwriting guidelines for real estate related loans; and

5. Prohibit arbitrary expulsion of creditworthy loan customers from restructured banks and thrifts.

Liquidation and Dumping

With respect to rapid liquidation or resolution (dumping) of properties, there are some dogs held by RTC and FDIC that should be dumped. Projects, even some with improvements, whose highest and best use is parkland for gophers and rattlesnakes ought to be disposed of immediately. Getting rid of these properties to anyone who will pay cash for them should not materially impact general real estate values and will relieve RTC of a bookkeeping problem.

The appraisal standards adopted on February 22, 1990 contain the seeds for generating firesale or liquidation values on RTC properties. The standards specifically require appraisers to consider financing availability (currently there is none) as a determinant of the prospective market values. While financing availability should always be considered in an appraisal, it appears that the emphasis placed in the current rules is an attempt to create initially lower values for which to apply the 95% requirement. Without some form of federally assisted financing and considering the small number of cash buyers in the marketplace, the strict application of the rules will obviously result in substantially lower values being initially placed on REO's and, thus, higher costs to taxpayers.

Residential properties present the greatest dilemma. The current housing market is soft. How much of the softness is due to anticipation of RTC and FDIC placing vast numbers of units on the market is conjectural. In the upper end of the market, there may be a one to one inverse correlation between the number of RTC units available versus new housing starts. Certainly, if the RTC properties are heavily discounted, the effect on new housing starts will be considerable in many areas. If the prices are generally competitive, the impact on new housing will be less, all other things being equal. A gradual infusion of the properties into the market, with acceptable, competitive financing, will mitigate the effect on similar existing properties and new housing starts.

There are a substantial number of lower end RTC properties where there is no effective demand. By effective demand, we mean that the individuals who need or would occupy the properties (and in some instances the properties themselves) cannot qualify for financing under current market conditions and underwriting standards. Likewise, the

current restrictions on investor financing eliminate these individuals from the market. Absent a policy change on financing, RTC has several choices:

1. Place the properties in the hands of a property management company and rent them;
2. Dump them for whatever cash price is offered; or
3. Mothball them until market and financial conditions improve or the properties biodegrade.

Commercial properties present an additional problem. Many of these properties are in the hands of RTC because they were not economically viable when they were developed. Some of the fault lies with the 1986 tax law, some lies with the developers' expectations being unrealistic, and some lies with general decreases in demand for office, retail and other commercial rental space. Due to cash flow problems, many of these properties have not been properly maintained. Others consist of unfinished vacant space or partially completed units. Prospective purchasers are going to be looking at future cash flow and the cost to rehabilitate or finish-out the projects. Absent realistic financing opportunities, prospective purchasers are not going to look at all unless the price is extremely low. RTC may well be better off holding those properties that have poor short term rental futures so long as the holding cost does not exceed the prospects for higher prices at a later date. Keeping these properties off the market may permit similar properties with better rental prospects to fetch higher prices in the current market.

Benefits and Limitations of the Proposed Solutions

1. The idea of government backed mortgage insurance on loans for RTC and FDIC properties is basically feasible and perhaps the only way to ensure availability of realistic financing for some of the properties. For many properties, however, the guaranteed or insured amount need not be more than 25-30% of the total loan amount. This has worked satisfactorily, but not necessarily perfectly, for VA and PMI insured loans. GNMA has provided an acceptable and workable secondary market for VA loans with the low percentage mortgage insurance. Why not establish RTCMA (RetzieMae) for RTC derived mortgages?

Mortgage insurance or guarantees involving high percentage coverage can create more problems than they solve. e.g. (a) with loans essentially guaranteed by an insurer, lenders may be less selective in qualifying borrowers and thus increase the chances of default; (b) the insurer, in the case of default, will probably have to take ownership of the property in order recoup a reasonable portion of the loss; and (c) in the end some governmental agency takes back the property the government is currently trying to get rid of.

One immediate source of federal mortgage insurance for some RTC and FDIC properties is FHA. A congressional mandate that FHA resume insuring investor loans for the properties along with adequate funding for the FHA program would help.

There are some RTC properties that would require a substantial loan guarantee in order to meet any underwriting standards. Such a guarantee would permit RTC to obtain a much higher sale price for the REO. Properties, due to location, physical condition, rental history, etc., may be sold for realistic prices only with a loan guarantee. Another benefit of high percentage loan guarantees is that the paper would be acceptable in the portfolios of banks and thrifts and provide a means for generating profits for these institutions.

The prices received from better quality properties would benefit with only a small percentage mortgage insurance program as they more closely fit within general underwriting standards to start with.

2. The use of the SBA would be appropriate only in a limited number of instances. SBA is focused on loans relating to manufacturing and retail businesses. Their expertise relating to general real estate financing is limited as is their budget. While they have a loan evaluation system in place, it is not particularly suitable for dealing with residential or commercial real estate being purchased primarily for owner occupancy or rental.

At the same time, in would be propitious for SBA to target their efforts towards financing small businesses whose financial institutions are either belly up or are unable or unwilling to continue servicing their needs.

An SBA "type" loan guarantee program could benefit certain incomplete or deteriorated commercial properties being purchased for rental purposes.

3. The principal problem with current banks and thrifts is unimpaired capital or the lack thereof. While federal deposits in the institutions would increase liquidity, they will not solve the problem of meeting the regulatory capital requirements in the short run. By themselves, additional deposits would cause the institutions to have to find additional capital to meet the minimum regulatory requirements. Under current regulatory guidelines, institutions with impaired capital positions are not permitted to engage in "asset growth." This means they are not permitted to make new loans.

On February 12, 1990, the OCC issued guidelines to commercial banks directing them to further reduce the amount of real estate related loans in their portfolios and essentially cease making any new real estate loans. Absent a marked change in the regulatory position, any new deposits in commercial banks would not be available for financing RTC or FDIC properties.

4. The Resolution Funding Corporation, REFCORP, may be the ideal vehicle to handle financing for RTC and FDIC properties. Its stated purpose is to issue bonds for financing a portion of the RTC operations. There is no reason REFCORP cannot be modified to act like GNMA and sell insured, mortgage backed bonds in the secondary market.

Such borrowings would be "off budget", not necessarily directly guaranteed by the government, and, therefore, politically expedient. The actual loan originations can be handled through mortgage companies, S & L's, and banks who are familiar with the property and markets in their local areas. Either the loans themselves or the bonds secured by loan packages could be funded by thrifts.

5. Commercial banks should place emphasis on making commercial loans. Such loans ought to include interim financing for commercial and residential construction. With the current squeeze on small business credit, involving commercial banks in substantial funding of RTC sales is not good policy. Every dollar a commercial bank uses to fund an RTC property is one less dollar available for small business loans. Unless the Federal Reserve Board makes radical changes in monetary policy, the prospect for sufficient deposit expansion to provide funds for both RTC properties and normal business needs does not exist.

As a basic tenant of monetary theory, bank and thrift loans for RTC and FDIC properties would not create deposit expansion as would general private sector loans. Monies loaned for RTC properties would go directly back to the government rather than being put in general circulation as is required to generate deposit creation.

Resurrected thrifts can be used as a source for RTC property funding. However, the core capital requirements may severely restrict their ability to make these loans. A general infusion of "real" capital into the thrifts is required to permit an adequate quantity of loans. Federal assistance in providing temporary core capital would allow thrifts to make good quality loans which, as repaid, would generate sufficient profits to enhance the capital positions of the institutions and repay the government.

Additional Areas of Concern

First, in an overcompensation for past lax lending practices on the part of banks and thrifts, both bankers and regulators have severely tightened lending criteria on all types of loans. There is apparently no particular liquidity problem in the banking system itself. i.e. many banks, and even some thrifts, have more than adequate funds to lend. However, there is a shortage of borrowers who are able to meet the current stringent lending criteria.

Second, in an attempt to reverse overnight the last thirty years strategy towards total deregulation of financial institutions, the OCC, OTS, FDIC and Federal Reserve have instituted material changes in the types, amounts, and terms of loans that each type of institution is permitted to make; e.g. limiting the number and amount of loans to a single individual, severely restricting the ability of commercial banks to make real estate related loans, the Qualified Thrift Lender tests for S & L's, and changes in the definition and computation of capital requirements.

The consequence is many banks and thrifts are unwilling or unable to meet the borrowing needs of long term, credit worthy customers. Add to this the number of federally sponsored mergers, takeovers and restructures of financial institutions where the new owners are essentially cleaning house with respect to the customer base. Thus the ability of many small business to obtain normal credit is severely restricted.

Third, one must consider that the amount of private capital available at any given time is relatively limited. Common sense and the public interest dictate that such capital should be invested in the most efficient, productive manner possible. The purchase of repossessed property cannot be considered to be particularly productive. That is, the purchase of such properties does not create many jobs, produce new goods and services, or improve existing technology. These expenditures behave like a transfer payment moving existing goods from one sector of the economy to another.

While there is a valid argument that these properties can be used more efficiently in the private sector than in the public sector, the increase in efficiency is not so great as to justify the immediate placement of these properties in private hands. Further, the private sector has neither the cash nor credit available to acquire these properties in a short period of time nor, even if the means were available, would it be desirable to spend it for them.

Fourth, no effective solution to any of the problems is possible as long as RTC, FDIC, and institutions under their control or supervision continue to increase their inventories of real estate and other "bad" assets. Tightening credit requirements, calling performing paper because it is the "wrong" kind of paper, arbitrarily classifying performing loans because of decreases in the appraised value of collateral, all exacerbate the existing problems. These are both regulatory and management created obstacles.

Entities that have taken over or acquired failed banks and thrifts have done so with the aid and assistance of public funds. Coupled with the use of public funds comes the duty and responsibility to act in the general public interest. While the new owners are entitled to have a different philosophy concerning their lending practices, such lending practices must be in the public interest and do not include arbitrarily requiring creditworthy borrowers to "move" their paper because of a philosophical distinction. Generally, there is not anywhere to move the paper which eventually results in business failures and foreclosures of collateral.

There are literally hundreds of examples involving millions of dollars of intrinsically good paper being turned into bad paper because of management or regulator decisions concerning what constitutes an appropriate loan for a restructured bank or thrift. This type of arbitrary and capricious action must stop or there will be no end to bank and thrift failures.

Citizens United for Responsible Economic Development, Inc.
Position Paper Number Three
Resolution Trust Corporation Contractor Standards

The Resolution Trust Corporation (RTC) Contractor Standards are found at 12 CFR Sections 1506 and 1606. The rules are designed to ensure that all RTC contractors and subcontractors meet certain minimum standards of ethical conduct. Specifically, John Heasly, staff attorney to the House Banking, Finance and Urban Affairs Committee, stated the standards were developed to prevent those who had stolen or embezzled from banks and thrifts from contracting with the RTC.

As applied in the contractor qualification process, several inconsistencies in the application and interpretation of the rules have become apparent. Also a diversity of interpretations as to what types of services are subject to the contractor rules have emanated from various RTC administrative officials.

I. Defalcation Provisions

The term defalcation needs to be clearly defined. *Black's Law Dictionary* defines defalcation as: "The act of a defaulter; misappropriation of trust funds or money held in any fiduciary capacity; failure to properly account for such funds. [The term is] Usually spoken of officers of corporations or public officials." Black's defines defaulter as: "One who misappropriates money held by him in an official or fiduciary character, or fails to account for such money."

Webster's Unabridged Dictionary defines defalcation as: "An abstraction or misappropriation of money by one, especially an officer or agent, having it in trust." Webster's refers the reader to the word "embezzlement" for further clarification.

The New Lexicon Webster's Dictionary defines defalcation: "A misappropriation of entrusted money."

Clearly, defalcation refers only to one who has defaulted on or breached his "fiduciary duty" to a financial institution.

RTC has chosen to interpret defalcation as including meaning an individual has defaulted or made late payments on a loan to a bank, S&L, or any other federally related agency, such as FNMA, GNMA or Freddie Mac. Apparently some RTC officials feel that poor business conditions, medical emergencies, or market conditions beyond an individual's control are equivalent to criminal fraud or embezzlement and refuse to make a distinction between honest business failures and theft.

It is abundantly clear the intent of the statute and rules was to prohibit individuals who are proven crooks from being RTC contractors. It is equally clear, based on other provisions of the rules, that a simple loan default or late payment may be the basis for a discretionary disqualification but not a mandatory disqualification. Further, the United States Attorney General has issued an opinion that a Chapter 7 discharge in bankruptcy, a Chapter 11 reorganization plan or Chapter 13 payout plan eliminates the simple default or non-payment of a debt as a basis for disqualification as an RTC contractor.

There are many highly qualified individuals and entities who have been involved in real estate and related activities who are arbitrarily being disqualified as RTC contractors because of inconsistent and inappropriate application of mandatory disqualification based on the "defalcation" provisions of FIRREA and the contractor rules. Further, the misapplication of the rules has caused many prospective RTC contractors to engage in constructive fraud by creating subsidiary entities that are "firewalled" from the primary business. The subsidiary entities are organized so that all of the employees are "clean" with respect to loan defaults or defalcation provisions. This practice has occurred with accounting firms, attorneys, real estate agents, property management firms, and many other entities seeking to become RTC contractors. A reasonable and consistent interpretation of defalcation would eliminate the need for responsible and competent businesses to engage is such subterfuge.

It is the position of CURED that the defalcation provisions of the RTC Contractor Standards be strictly construed so as to apply only to individuals or entities who have been proven to have engaged in acts of fraud, embezzlement, or theft related to federally insured financial institutions or federally guaranteed or insured loans. Cured believes that the RTC Oversight Board must issue a policy statement which specifically limits the mandatory disqualification of prospective contractors to those individuals and entities which meet the strict definition of defalcation.

II. Individuals and Entities to Whom Contractor Rules Apply

The RTC Contractor Rules as published do not adequately define what entities or activities are covered by the rules. Various RTC officials have, from time to time, issued memoranda purporting to define what entities are required to comply with the rules. It is reasonably clear that individuals or entities seeking to obtain exclusive listings on high

dollar real estate, to become property managers, to render substantial accounting services or legal services are subject to the contractor standards. Further, there is some indication of a *de minimis* level of approximately $25,000 annual income below which some RTC offices feel that the standards do not apply.

The Southwest Regional Office of RTC has unequivocally stated that the contractor rules do not apply to "selling" brokers or real estate agents who procure buyers or tenants but do not seek or have exclusive listings or property management agreements with RTC. However, there are many documented instances of receivership and conservatorship thrifts refusing to accept contracts or pay commissions to real estate agents who are selling brokers or who procure tenants because the agents have not qualified or might not be able to qualify as RTC contractors or subcontractors.

There is general inconsistency with respect to occupations, trades, or business which may or may not be subject to the contractor rules. Such businesses include lawn maintenance, pool cleaning, janitorial services, plumbers, electricians, HVAC technicians, and other repair and renovation type entities. Some RTC personnel, receiverships and conservatorships seem to think these businesses are subject to the rules while others do not.

It is the position of CURED that a standard, definitive policy should be adopted by rule to specify which entities or services require qualification as contractors pursuant to the rules and establish a definitive *de minimis* amount below which the rules do not apply. The RTC Oversight Board should adopt a policy statement which clearly defines the areas in which contractor standards do or do not apply.

III. Contractor Selection Methods and Criteria

The contractor selection process as developed by the RTC is designed to prevent even the appearance of collusion or favoritism by RTC officials in awarding contracts in all areas. Both the initial and final selection process for individuals to submit bids for any specific contract are based on computer generated random selection of accepted contractor registrants. No attempt is made to restrict the random selection to individuals or entities within a specific geographic area and apparently little, if any, consideration is given to the area of expertise of an individual in connection with the individual's inclusion in the final pool of prospective contractors given the opportunity to bid.

It appears, even with the apparent safeguards built in, some qualification standards have been drafted by RTC personnel which would preclude all but one or an extremely limited number of prospective contractors from being able to qualify for a specific property or package.

While the attempt at preventing favoritism is commendable, the end result is that many entities chosen for the final selection process are either unqualified, not interested, not within a reasonable geographic proximity, or totally ill-suited with respect to the specific contract. In some instances, no individual or entity randomly selected to be in the final bid group was capable of performing the proposed services to be contracted for. Consequently, a number of the contractor selection processes have resulted in RTC having to reinitiate the entire procedure in order to obtain a competent contractor. This causes a considerable waste of time and money and further complicates and lengthens the disposition or resolution procedure.

Part of the problem may be the result of prospective contractors checking incorrect boxes on their applications implying they may be qualified for or interested in certain types of contracts for which, in fact, they are not. Another part of the problem could be caused by imprecise data entry by RTC personnel which would cause the computer to randomly select inappropriate individuals. A third cause would involve computer programs that are not sufficiently sophisticated to randomly select only those applicants who have indicated the proper qualifications, areas of interest, and reasonable geographic proximity to the subject matter.

A practical solution to the problem would involve modification of the contractor selection process so that the initial computer selection process would be programmed to select only those applicants who have indicated they are qualified for, interested in, and operate in a reasonable geographic area, if applicable, with respect to the services for which RTC seeks contractors. Further, RTC should be permitted to manually cull both the initial selection and the final selection of individuals or entities in order to eliminate those with faulty applications or who are unquestionably unqualified or inappropriate for the specific contract set for bid.

In some instances dealing with unique properties or packages of securities, RTC should be permitted to select a reasonable group of qualified applicants and generate a Request for Proposal (RFP) from the groups as a means of selecting the contractor. Such initial groups sent the RFP would be selected on the basis of their contractor applications and any other specific information concerning qualifications or expertise of which RTC may be aware. There are adequate safeguards built into the system to prevent illegal or unethical activities in the selection process with RFP's.

It is the position of CURED that the contractor selection process should be modified to permit RTC offices to procure contractors for certain types of services by use of Requests for Proposals or individual review of contractor qualifications prior to sending out notice of bids to prospective contractors. CURED believes that modification of the process would permit RTC to employ a greater number of competent contractors and materially shorten the time period required to select the contractors.

CURED Analysis of Progress on Implementation of RTC Seller Financing

On February 11, 1991, the Resolution Trust Corporation, in compliance with the RTC Oversight Board Policy Statement 15, developed assorted seller financing programs detailed in Circular 10100.8 from Lamar C. Kelly, Jr., Deputy Executive Director of RTC. The circular was allegedly distributed to all Washington, Regional and Consolidated Offices.

The financing guidelines stated they applied to the sale of real estate assets of all conservatorships and receiverships and their controlled real estate subsidiaries. The guidelines contained specific details for the various types of properties held by RTC or entities under its control. In addition, the circular stated that the detailed underwriting guidelines and standards and implementation requirements would be published no later than April 1, 1991.

As of June 12, 1991, the only underwriting standards or implementation procedures which have been generated or distributed involve commercial properties with a value in excess of $500,000. The distribution of this information is apparently very limited as many RTC asset or property managers and resident agents are totally unaware any seller/owner financing is available for RTC assets.

These problems currently exist:

1. Apparently the dissemination of circular 10100.8 was extremely limited or ineffective based on the number of people who should know about the owner financing but state they do not — e.g. the CEO of an Austin federally chartered Savings Bank handling $135 million in RTC REO was unaware of any seller financing as of June 6, 1991;

2. The RTC Sales Centers state they have no knowledge of how to nor authority to implement financing on anything but commercial properties over $500,000;

3. Most asset managers claim to be unaware any owner financing is available for any properties as per circular 10100.8;

4. If any underwriting and/or procedural guidelines for classes of properties other than $500,000+ commercial assets have been generated, no one is willing to admit having the information;

5. Real Estate Agents, either listing or attempting to sell RTC properties, have been provided with little, if any, information concerning owner financing; and

6. Properties for which little or no private sector financing is available, generally because of property condition, location, and buyer characteristics, (affordable housing multi-family and 1-4 family units) are not being sold. In most instances the properties are not even shown by real estate agents because of the lack of financing.

7. RTC Chart 200001\30, dated June 1, 1991 details the "Contract Timetable" for seller financing contracts. RTC specifies a 45 day examination and approval period for the initial submission of a contract involving seller financing. If tentative approval is given to the contract, then RTC has 20 days to deliver a title report and other property documents. Following tentative contract approval and title report, the prospective buyer submits a loan application and fee which RTC then has an additional 45 days to accept or reject. If loan approval is given, then the deal may close in another 30 days. The total time period, and based on RTC's previous track record the minimum time period, from contract submission to closing is 140 days. RTC has the ability during the first 110 days of the process to "shop" the contract and attempt to procure an all cash buyer or another contract on more favorable terms. No sane buyer is going to be willing to submit a contract on these terms. It is apparent, based on the time frames, the stated duties of buyers and seller, and other conditions of the seller financing contracts that RTC's intent is to discourage submission of contracts involving seller financing.

Either Circular 10100.8 was generated as a cruel joke to assuage members of congress and public interest groups who have pushed for reasonable owner financing or the RTC has failed miserably in its attempt to communicate the means of submitting contracts and loan applications for property categories listed in the circular.

The only conclusion one can presently draw is that RTC does not intend to implement the seller financing program in any meaningful manner.

GOVERNMENT GUARANTEED FINANCING FOR RTC & FDIC ASSETS

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PRELIMINARY OUTLINE OF REGULATIONS OF THE GUARANTEE SYSTEM FOR PROPERTY SOLD BY RTC/FDIC, WHERE THE RTC/FDIC, ON BEHALF OF THE UNITED STATES GOVERNMENT, WOULD GUARANTEE THE REPAYMENT OF ANY LOAN MADE SECURED BY RTC/FDIC PROPERTIES TO THE LENDER OF RECORD.

As much as would be practical, the loan guarantee amounts and procedures follow the SBA Business Loan concepts of 13 C.F.R., Part 122, with certain changes necessary to effectuate the sale of RTC/FDIC-held real estate, consisting of homes, apartments, commercial property, and raw land.

The purposes of RTC and FDIC in disposing of assets should be identical; i.e., to achieve the highest dollar amount for the property at the least cost to the Government. For the rest of this memorandum we will be referring to RTC, but the same criteria apply to FDIC.

Part 122 has a limitation of $750,000 in exposure on any loan for the SBA and provides for a 90% guarantee not to exceed $155,000 and 85% to not less than 70% up to the maximum amount. The same concept would apply to RTC, with no cap — because the idea is to convert RTC property to cash. The fundamental difference is that the government receives 100% of the cash before it makes any guarantee.

1. HOME LOANS. For persons purchasing home loans from the RTC, the RTC would guarantee ninety-five percent (95%) of the owner-occupied loans, provided that the owner and occupier had made at least a 7 to 10 percent down payment. The amount of down payment would be determined on a case-by-case basis, based upon the ability of the homeowner to repay.

2. HOME LOANS NOT OWNER OCCUPIED. These loans should be guaranteed to 95% to $155,000 total sales price; 85% guaranteed up to $500,000, and 70% over $500,000. The total amount of the down payment should be between 10 and 20 percent of the total amount of the loan, such determination to be made on a case-by-case basis, depending upon the ability of the borrower to repay.

3. APARTMENT COMPLEXES. Guarantee not to exceed 85% of the amount loaned; down payment between 10 and 20 percent. The down payment to be determined on a case-by-case basis.

4. COMMERCIAL LOANS. Same as apartment loans.

5. RAW LAND. The guarantee amount shall fluctuate between 70% and 85%, to be determined on a case-by-case basis, and the down payment shall be between 10 and 20 percent, to be determined on a case-by-case basis.

6. LOAN MATURITIES. Maturities shall be made for a period not to exceed twenty-five (25) years. The maximum maturity shall not be available for everyone. The maturity of each loan will be the shortest feasible term commensurate with the repayment ability of the borrower. Payments will generally require equal monthly payments of principal and interest, plus escrows of taxes and insurance. Unusual cases will require the payments to be adjusted to accommodate seasonal cash flow of the borrower.

7. INTEREST RATES. Home loans should offer a fixed rate based upon the same formula utilized by FNMA and FREDDIE MAC or provide a variable rate based upon the New York or *Wall Street Journal* prime. Other loans should be variable rates keyed off of prime.

8. QUALIFICATION OF BORROWERS. Borrowers should be qualified on their ability to repay the loan in an established fashion, such as currently being utilized by the FHA; provided, however, that a more flexible system should be devised to give to the lenders themselves some ability to underwrite the borrower's ability to repay.

9. DUE ON SALE OR LIMITATION OF USE. If economics is the driving force behind this program, the guarantee provisions should not be "Due on Sale" or "Change of Use", if neither the value of the property nor the ability of the borrower is substantially the same. Language should be included to the effect that while the assignment or sale could not be made without prior approval of the RTC, such approval would "not be unreasonable withheld," which carries with it the implied meaning that the intended use and ability of the borrower would be subject to prior scrutiny of an approval by the RTC. However, such approval would be required if the ability to repay by the new borrower would not be diminished. The provision would increase the value of the program. (See example under 11. below)

10. LOAN ADMINISTRATION PROVISIONS. 13 C.F.R. 120, now utilized by the SBA should be adopted with changes in language only to accommodate the different purpose of the program. Many of these provisions would solve particular problems that the SBA has encountered during its long history and provides certain incentives and safeguards to both the lender and the SBA and now the RTC.

For instance, one provision in the SBA program which provides that the lender may not (1) sell the uninsured portion of a loan that it initiates and (2) charge a guaranty fee has much merit. (Section 120.104-1.) The requirements that the participating lender in the SBA share in any loss and the ability of the originating lender to sell the insured

portion of the loan in a centralized manner, as provided in Subpart "C" of Part 120, beginning with 120.3, have equal merit. The ability to sell the insured portion means that the local participating lenders will originate insured loans in which all financial institutions in the United States can participate and further provides that the participating banks can repeatedly participate in the program without violation of their individual loan limit.

11. Special Valuation Programs [12 USC 21A(c)]. The only difficulty in establishing the Guaranty Program would be the determination of the scope of the program. It would be natural to utilize the advantages of insured lending for the purposes of promoting affordable housing in accordance with the dictates of FIRREA in Section 21A(c). The difficulty in affordable housing and lower income housing is not the concept, but the execution. The undeniable fact is that the examiners of financial institutions must determine the validity of any loan based upon the ability of the borrower to repay and the value of collateral versus the amount of the loan.

a. Affordable Housing/Lower Income. Special Valuation Programs could be introduced into the Loan Guaranty Program where the amount of the loan guaranteed and originated by the lender could be tailored to the ability of the borrower to repay. To protect the government, a substantial Due of Sale clause must be added so that when the particular borrower is no longer qualified under the Affordable Housing Program or other Special Valuation Program or would sell the collateral to one not qualified, the government would be paid not only for its insured value, but for the full value of its collateral, which was temporarily being used in an Affordable Housing Program or Special Valuation Program.

An example would be a $50,000 house used in the Affordable Housing Program to a borrower. Such a house could be valued, based on ability to repay, say at $25,000. The lender could originate a loan, guaranteed at $25,000, with no money down from the borrower. The borrower would be able to repay a note of a $25,000 house on around $200 per month plus taxes and insurance. If this borrower desired to sell the house to a non-qualified borrower, the government would receive on such sale up to the additional $25,000 in value when the house is taken out of the Affordable Housing Program, less the value of any material improvements made by the original borrower. Of course, if it is sold out of the program and that portion of the home still belongs to the government, the lender could then qualify the new buyer under the regular housing program and require a 7 to 10 percent down payment from the borrower and RTC guarantee up to 90% or 95% of the loan.

b Non-Profit Public Housing: Once again, a formula could be devised to encourage development in low to moderate income areas by adjusting the amount and percentage of the guaranteed loan. The possibilities here are so numerous that we will not try to list examples, but by using the guarantee, the government could operate from a cash position.

12. Construction/Working Capital Loans. The initial concept would not include any construction loans or development loans, nor would it include the use of any guaranteed working capital loans. It would seem that there could be a possibility of cooperation with and coordination with the SBA in making those kinds of loans.

13. Use of Guaranteed Loan with RTC Controlled Thrifts. The next extension of the program could be to the real estate owned or REO assets being held in RTC conservatorship shops throughout the country. These are properties that are not necessarily held by the RTC, but are still in the operating institution which is being conducted under some conservatorship program. In many instances, by eliminating the drag of REO in the conservatorship shop, the thrift or bank could be placed in a non-loss holding pattern, or perhaps could even make a little money pending sale or liquidation. In either case, the government would be the winner.

The drag of REO's in a financial institution is a numbing situation. First, the asset in the REO usually is nonproductive, does not earn. The liability that matches that non-earning asset continues to cost substantial funds in money and interest costs. This doubles the impact of the non-earning asset. By placing the assets back in an earning status with the conservatorship institution through the use of a guaranteed loan program, the losses would be minimized.

14. Deposits of Funds. The other side of the coin might be that the RTC could utilize the large amount of funds being generated by the Loan Guaranty Program to deposit funds in conservatorship institutions for the purpose of giving these institutions the ability to participate in the Loan Guaranty Program and at a greater rate than they otherwise would be, that is, making them somewhat larger so that by participating in the Loan Guaranty Program they can reduce enough non-earning assets to minimize the drain of funds from the institution. Such funds could also be used to help recapitalize problem thrifts by purchasing preferred stock in the thrifts or substantially diluting existing shareholders positions.

Conclusion

This memo is not designed to be a final word on the workings of a guaranteed loan system. Patterned after the SBA 15 USC 661, et seq., and 13 CFR 122, et seq., once agreed on, the details could be rapidly reduced to statutory and regulatory language, based on the long history of the SBA.

The concept is also consistent with the intent of 12 USC 21A(c)(6)(ii). However, instead of the government receiving only a portion of the purchase price and "carrying the paper," it receives 100% of the cash at the time of sale. It could be argued that the power to accomplish this guarantee program is already contained in 12 USC 21A(b)(11).

KEMP
PROPERTIES
DICK KEMP
REALTOR

May 28, 1991

Mr. Henry C. Glasgow
SWS Realty, Inc.
8214 Westchester, suite 850
Dallas, Texas 75225

RE: Kenneth/Kirksey Duplexes-Fourplexes

Dear Hank:

As you know, we have negotiated, on behalf of The Saletta Family Trust, a full price contract on the above property, in the amount of $1,426,000. The effective date of the contract is May 22, 1991.

Since our original offer date we have been soliciting 75% financing for the project. Few lenders will even look at the project and none will entertain financing on reasonable terms. The following is a summary of the best responses we have received:

NCNB; Lamar Spencer is the only commercial loan officer for the entire Austin and San Antonio market. He offices in San Antonio. He indicated that their commercial loan policy had just been revised and that they were only interested in commercial loans of over $5,000,000. Their rejection letter is enclosed. NCNB controls over 40% of the banking industry in Texas. They are clearly not in the lending business for 90% of the market which is under $5,000,000 loan amount.

Franklin Federal Bancorp.; The property does not meet their loan portfolio requirements, i.e. mixture of duplexes and fourplexes operated as apartments.

Holliday Fenoglio Doherty & Gibson, Inc.; Their only possibility was a bridge loan of 70% with 1% origination fee plus a $20,000 fee to Holliday and full personal guarantee of the borrower.

There is no suitable financing for this or most other commercial properties in Texas at the present time.

There is financing available through the Resolution Trust Corp. and the FDIC, Financial Assistance Branch, Division of Liquidation all of which is under the supervision of the RTC, for the Southwest Plan Institutions in conservatorship or receivership.

3034 S. FIRST, #102
AUSTIN, TEXAS 78704
PHONE (512) 447-2535

According to Mona Pittenger, RTC real estate specialist for the South West Region, RTC policy # 46; seller financing, rejection letters are not required to obtain seller (RTC) financing and any property over $500,000 qualifies. Ms. Pittenger may be reached at 214-443-4582 for confirmation.

In a telephone conversation on May 23, 1991 between Carmen Sullivan, RTC Regional Director, and Dick Kemp, Ms. Sullivan confirmed that RTC was financing, wanted to close deals, and she was convinced there is not suitable financing in the market place. Ms. Sullivan may be reached at 214-443-2333 for confirmation.

At Ms. Sullivan's request, Steve Hiltz, coordinator of RTC Sales Centers for the northern part of Texas, contacted me on May 23, 1991. He confirmed what Ms. Sullivan said with regard to the availability and requirements of RTC financing. He went on to state that whether a property was an FDIC covered asset or not was an internal matter for RTC. Whether the actual financing came through RTC or FDIC/DOL should not be of concern to the consumer. The procedures should be the same. Mr. Hiltz may be reached at 214-443-2300 for confirmation.

Mr. Juan Patlan, RTC coordinator of the Austin Sales Center, and Mr. Gib Campbell, RTC Austin Sales Center, agree that RTC financing is available and the subject property qualifies. They also believe that investors or brokers should not be required to understand the internal workings of the RTC to the point that they would know that a property is an FDIC covered asset or a straight RTC asset. The answer should be the same; financing is available. They may be reached at 512-443-9464 for confirmation.

On January 30, 1991, our firm hand delivered to SWS Realty, Inc. five offers on Southwest Federal Savings properties representing $19,251,000 of listed value. FAB/FDIC/DOL financing was requested. A letter from the FDIC in Dallas, dated January 14, 1991, stating that financing was available was included with the offer (copy of letter is enclosed). All offers were countered all cash. We were told that the requested financing was available only to covered assets and the subject properties were not covered assets.

The explanation we have received from our present request for RTC financing has been that the subject asset is an FDIC covered asset and financing must come through FDIC and they must be convinced that there is no other financing available. The subject property was included in the January 30, 1991 offer. At time we were told it was not a covered asset.

The point is this:

1. We have a buyer who has contracted to pay full price for your asset.

2. RTC financing is available.

3. Our buyer is ready, willing, and able to close under RTC financing guidelines.

Our request is this:

1. Southwest Federal Savings Bank agree in its Wednesday May 29, 1991 executive committee meeting to proceed with RTC financing under the following terms and conditions:

> $1,069,500 (75%) financing. The term of the loan will be 84 months with interest rate of 9.5% for the first two years and 125 basis points over prime as quoted in the Wall Street Journal for years 3-7.
>
> Amortization will be based on 30 years and balance of note shall be due at the end of 84 months. This mortgage would be made with no recourse to the Purchaser. Monthly payments would begin 30 days after closing.

2. Closing take place on June 14, 1991 at, 10:00 AM., in Austin, Texas.

These terms and conditions are very similar to a transaction we closed with RTC, Florida, Southeast Region, on May 24, 1991. The main difference is the Florida transaction was financed with only 15% down payment. The property is located in Austin. The transaction was closed within seven days of the effective date of the contract.

We would also like to address the subject of brokerage commissions. An enormous amount of effort has gone into this transaction as well other pending and rejected offers. Our firm now has offers into SWS Realty, Inc. representing $9,663,000 of listed value, most of which are the same properties submitted in our January 30, 1991 offer.

SWS Realty, Inc. is a wholly-owned subsidiary of Southwest Federal Savings. The brokerage profession views SWS Realty, Inc. more as an employee or extension of Southwest Federal Savings than that of an independent brokerage firm. Any commission splits are considered a reduction in total commission rather than a true split between a listing and cooperating broker. This is no reflection upon the professionalism of the individuals within SWS Realty, Inc. We have found them all to be professional and helpful. It is merely a perception of function within the marketing process. We feel any fees or commission paid to SWS Realty, Inc. should be seperate from commissions offered to the brokerage community.

We respectfully request that Southwest Federal Savings pay Kemp Properties a professional brokerage fee on all transactions it consumates as follows:

6% on the first $500,000

3% on amounts exceeding $500,000

We recognize the fact that the disposition of RTC controlled asset is difficult, confusing, and frustrating at best. Please consider our request. We truly feel they are reasonable and within RTC guidelines. I am available any time to discuss these proposals.

Thank you for your consideration.

Sincerely,

Tom Stacy

Tom Stacy

encl.

cc: Congressman J.J. "Jake" Pickle
763 Federal Building
Austin, Tx. 78701

Carmen Sullivan
RTC Regional Director
300 N. Ervey, 23rd floor
Dallas, Tx. 75201

Steve Hiltz
RTC Regional Sales Center Coordinator
300 N. Ervey
Dallas, Tx. 75201

Juan Patlan
Gib Campbell
RTC Sales Center
4303 Victory Drive, suite 201
Austin, Tx. 78704

swsken.doc

FDIC
Federal Deposit Insurance Corporation
5080 Spectrum Drive, Suite 1000 East
Dallas, Texas 75248
214-701-2400
FAX #214-701-3888

Kathlyn G Heiser
Department Head, ORE Sales Support
Division of Liquidation
Dallas Consolidated Office
214-701-7245

January 14, 1991

Mr. Tom Stacy
Kemp Management
3036 S. First, #102
Austin, Texas 78704

SUBJECT: Southwest Plan Asset Financing

Dear Mr. Stacy:

Please find the enclosed list of failed and assuming Southwest Plan institutions per your request of January 2, 1991.

Responding to your question in regard to financing; the RTC has a function separate from the Division of Liquidation (DOL), in that it is responsible for the liquidation of Savings and Loan assets acquired after January 1989. DOL is responsible for the Savings and Loan assets acquired prior to that time, including the Southwest Plan assets. Therefore, the RTC does no financing of the Southwest Plan assets.

DOL is financing properties to facilitate sales. We are providing financing on properties where other financing is unavailable due to the type of collateral, i.e., vacant land and investment properties. Some residential may be included, but only in cases where the property's appraised value exceeds $1 million.

I trust this provides the information you require. If you have further questions you may contact me directly at (214) 701-7245.

Sincerely,

Kathlyn G. Heiser
Department Head
ORE Sales Support

Enclosure

KGH:jdm:TSTACY.LTR

NCNB Texas
San Antonio Banking Center
300 Convent Street
P.O. Box 300
San Antonio, Texas 78291-0300
(512) 270-5555

NCNB
Texas

May 24, 1991

Mr. Tom Stacy
3036 S. First, #102
Austin, Texas 78704

Dear Mr. Stacy:

In response to your inquiry concerning possible acquisition financing for duplexes and four-plexes in Austin, this shall serve to confirm our telephone conversation in which I indicated that this type of project financing falls outside of our current lending parameters.

Should you have any additional questions, do not hesitate to contact me.

Sincerely,

Lamar R. Spencer
Senior Vice President

LRS/kl

Holliday Fenoglio
Dockerty & Gibson, Inc.

May 14, 1991

Mr. Tom Stacy
Kemp Properties
3036 S. 1st., Suite 102
Austin, Texas 78704

RE: Kenneth/Kirksey Duplexes & Fourplexes

Dear Tom:

I have reviewed your loan request on the above referenced project.

As you are aware, Holliday Fenoglio Dockerty & Gibson, Inc. corresponds for 16 life insurance companies and pension funds. Although many of these companies are active apartment lenders, none will make loans on single family or duplex/fourplex properties, despite the fact they are run as rentals.

I believe the transaction is suited for interim lenders, such as banks or thrifts, which could provide a 3-5 year bridge loan. I believe the loan would be floating at approximately 2% over prime, with a 1% origination fee. The loan would be 70% of cost, and requires the full personal guarantee of the borrower.

I hope this has been helpful. Please call if you have any questions.

Sincerely,

HOLLIDAY FENOGLIO
DOCKERTY & GIBSON, INC.

Julian E. Blum

JEB/wew

FAX (512) 447-5755

kenn514.lbp

Century 21
COOK & ASSOCIATES
4501 Spicewood Springs #1040
Austin, Texas 78759
Office (512) 343-1233
Toll Free (800) 221-1109

STEVE SCOTT
Broker
JUDY SCOTT
Broker
Residence (512) 345-7224

RTC
Nadine Allen

Fax # 708/541-4439

Re: Dr. Mark Sweeney

This is a short summary on the recent history of the property at 4203 Greystone Drive.

In September 1990, Dr. Sweeney listed his house with Century 21 Cook & Associates and I am the listing broker.

In November 1990, we received a contract on the property but were not able to work out an agreement with Banner Bank or Dr. Sweeney. In December of 1990, a hard freeze broke a water pipe in the attic of the property causing extensive damage to the carpet, walls, ceilings, light fixtures, etc.

At that time I called Kathy Costner at Banner Bank:
[1-800-441-9021
P. O. Box 214159
Dallas, TX 75221-9990]
and told her of the problem. Also I stated that the insurance company would pay for the damage, and as soon as the damage was repaired, we would put the house back on the market.

Cordell Hull, an adjuster for the insurance company, inspected the house and authorized the repairs. The work was done by: Castle Builders (plumbing, $325.00); Hill Country Pools ($1223.10), and Doug Arnold Construction ($7418.24).

Upon completion of the work, I called Kathy Costner and told her that the work had been completed except for the pool and that the pool people wanted 1/2 of the cost before they would start the work. A letter of that conversation was sent with the check from the insurance company with all the bills to Kathy Costner.

Each Office Is Independently Owned And Operated

Nadine Allen
Fax #708-541-4439
Page 2

Several days passed and a check had not been received and I called and she said the loan had been sold and that Banner Bank would not be disbursing the check and we would have to deal with the new servicing company.

I have been dealing with Kathy Costner for 4 to 5 months and thought the matter had been solved.

To be honest, it never occurred to me that the investor would want to not have the work done and leave the house with wet, molding and rotting carpets, and to have a pool left in a condition that was fast becoming a health hazard.

Your help in the solution of this problem will be greatly appreciated. If you have any questions as to the events in this matter, please give me a call at 1-800-221-1109.

Sincerely,

Steve Scott

The loan on this house is owned by RTC. It took 3 more weeks to get the problem solved. It almost bankrupt Day Arnold Construction.

KEMP
PROPERTIES
DICK KEMP
REALTOR

April 24, 1991

To : David Cooke
Lamar Kelly

From : Dick Kemp

Subject : RTC Contractors

Just a note to give you an idea what happened this week with a buyer we had in town with $300,000 cash and a line of credit for $250,000. The buyer has made the attached offers this week and his plan is to pay 40% - 50% down on a $500,000 to $600,000 project and pay all cash on a $250,000 project.

First we called to check on some duplexes listed by a contractor for the RTC. The duplexes were in the local Austin MLS indicating that they were available for sale. In a call to the broker, she explained that they had been under contract to sell for some time and in fact, were closing in a couple of days. The point here is that the agent was so inexperienced, she did not comply with MLS rules and post the properties with the "contract pending" designation through MLS.

The next broker we called to get information on a group of duplexes told us the same story. All properties were under contract. Since this was the second straight misuse of MLS, we decided to check directly with the lender/owner. We found that some of the property was available. Attached is a letter indicating that the broker would not return telephone calls, therefore, we sent offers direct to the lender. The point: brokers contracting with the RTC are less than experienced.

The third incident of the day is very puzzling to say the least. The largest management firm in Austin handles over 4,000 properties in Texas. I'm told the same firm has also been designated as an asset manager for institutions and they will be giving property to other brokers to market. We called this firm to ask about properties for sale because I know the owner and vice-president of marketing. During the phone conversation, I asked about duplexes or multiple units for sale. They gave me addresses and pricing on two

3036 S. FIRST, #102
AUSTIN, TEXAS 78704
PHONE (512) 447-2535

projects. I asked for operating statements so we could analyze the property. They told me that they did not provide such information but would send a rent roll. Attached is a copy of a fax with the rent roll for October of 1990. I was enraged that such a large firm would market properties in such a fashion. I was also told that they did not place these properties in MLS or advertise or send out brochures. I was so upset I asked them to come to my office and showed them one of our property brochures. They laughed and told me that marketing in the 90's did not include such information. They said they sold property off the rent rolls.

We made two offers on the projects. A broker who works for their firm called to say that we were given the wrong price on one project and that the other project was closing this month. The point: total incompetence. The marketing of RTC properties in Texas is a sham, the property management firms don't want to sell, the asset managers and brokers give you incorrect information and it is no wonder why the properties in Texas aren't selling as they should.

I am asking that you drop the contractor disqualification because of loan loss (defalcation) unless fraud is proven. This would place the RTC properties in the hands of qualified, experienced brokers that know how to market the properties! If you do not, I must consider other avenues to encourage you to change.

I congratulate you on the appointment of Juan Patlan. He is absolutely the greatest. Thanks for your time.

KEMP
PROPERTIES
DICK KEMP
REALTOR

April 11, 1991

Mr. Bob Holzmueller
RE/MAX Realtors
6836 Austin Centre Blvd.
Suite 125
Austin, Tx. 78731

RE: Letter of Intent on ten (10) duplexes, Austin, Tx. owned by NVR Federal Savings.

Dear Mr. Holzmueller:

Enclosed please find the above referenced letter of intent. After speaking with you two weeks ago about the availability of the NVR, Austin duplexes, I was unable to determine the actual availability from the information you gave me. I left two messages at your office and one at your home on Monday, April 8, 1991. You have not returned my calls.

After speaking with Mr. Gerald Luttrel, of NVR, on Monday the 8th, he referred me to Carolyn Nowakowski, who was extremely helpful in determining the actual availability.

The subject duplexes are a mixture of quality of units including one that has possible structural damage. The buyers have cash funds on hand and are willing to close within ten days after the inspection period. The buyers are moving to Austin for six months beginning May 1st in order to complete their acquisitions and oversee their investments. They are here now and will be leaving Austin on Monday, April 15th.

Please forward the letter to NVR at your earliest possible convenience. I will be at your disposal at anytime, if you need to speak with me.

Thank you for your consideration.

Sincerely,

Tom Stacy

Tom Stacy

encl.

cc: Mr. Gerald Luttrel
NVR Federal Savings Bank

3038 S. FIRST, #102
AUSTIN, TEXAS 78704
PHONE (512) 447-2535

April 12, 1991

Mr. Robert Starnes
Ontra Properties
816 Congress Ave.
Austin, Texas 787701

Re: Hampton Park Terrace
Austin, Texas

Dear Bob:

We have inspected the property referenced above and have reviewed certain information obtained from you. The Saletta Family Trust, %Mr. Frank Saletta, P.O. Box 1256, Murphys, Ca. 95247, is prepared to proceed with the acquisition of the Property under the following terms and conditions:

1. The purchase price for the property shall be as follows:

$ 400,000 Cash at Closing

3. A definitive Purchase and Sell agreement ("Agreement") in a form, scope and substance satisfactory to both parties shall be signed within 20 days from the execution of this letter.

4. Upon execution of the Agreement, purchaser will deliver a $15,000 "Earnest Money Deposit" to Commonwealth Land Title Company of Austin., 3415 Greystone Dr., Ste, 102, Austin, Texas to be held according to a separate escrow payment.

The Earnest Money Deposit will become non-refundable if the Agreement has not been terminated prior to the expiration of the inspection Period, as defined herein.

5. Purchaser shall have until the end of the 15th day subsequent to the receipt of the due diligence items as outlined in Exhibit A hereto and execution of the agreement ("Inspection Period") to review and approve all aspects of the Property. During the Inspection Period those persons designated by purchaser shall have reasonable access to the Property, and may review documents in the Seller's possession related to the Property.

6. Within five (5) days from the execution of this letter the Seller will deliver or cause to be delivered to the buyer the plans, records and information as outlined in Exhibit A attached and other information that may be reasonably necessary for Purchaser to review the Property.

7. Closing shall take place twenty (15) days following the end of Purchaser's Inspection Period.

8. The Seller's only liability for Brokerage fees shall be to Kemp Properties, $12,000 and Ontra Properties, $12,000.

9. Upon full execution of this letter, the Seller will not accept any other offers to purchase the Property until this letter or the Agreement expires or otherwise terminates.

10. Purchaser shall be responsible for the cost of any inspection or environmental reports concerning the Property that are commissioned by the purchaser.

11. The Seller shall pay for an owner's title policy and survey of the Property and its attorneys fees. All other closing costs shall be shared by the Purchaser and the Seller in the customary manner.

12. Seller agrees that this transaction shall be a 1031 deferred property exchange.

The Seller and the Purchaser acknowledge that this letter is not intended to constitute a binding contract for the sale of the Property and that a contract will not exist unless and until the parties have executed an Agreement approved by their respective counsel covering the terms of this letter and all other essential terms of this transaction. The parties acknowledge that they have not attempted to set forth herein all essential terms of the subject matter of this transaction and that such essential terms, including without limitation warranties and representations, have not been agreed upon by the parties and are subject to further negotiations.

Notwithstanding that either of both parties may expend substantial efforts and sums in anticipation of entering into a contract, the parties acknowledge that in no event will this letter of intent be construed as an enforceable contract for the sale of this Property.

EXHIBIT A

RE: Hampton Park Terrace

A. Most current boundary survey with topo, tree locations and flood plain area.

B. Most current as-built survey for improvements (buildings, parking, utilities, etc.)

C. A current rent roll acceptable in form to Buyer and certified by Seller to be true and correct as of the date of delivery.

D. All leases pertaining to the property, including any and all modifications, supplements, or amendments thereto.

E. A current inventory of all tangible personal property and fixtures owned by Seller and located on, attached to, or used in connection with the property, certified by the Seller to be true and correct as of the date of delivery.

F. Note(s), Deed(s) of Trust and other loan documents pertaining to loan(s) assumed or taken subject to:

G. All service maintenance, management, or other contracts relating to the ownership and operation of the property.

H. All warranties and guaranties relating to the Property, or any part thereof, or to the tangible personal properties and fixtures owned by Seller and located on, attached to, or used in connection with the Property, if available.

I. All fire, hazard, liability, and other insurance policies held by Seller on the Property.

J. All of the most recent real estate and personal property tax statements with respect to the Property

K. All leasing or other commission agreements with respect to the Property, which commission are being assumed by Buyer pursuant to paragraph hereof.

L. The " as built " plans and specifications with respect to the Property, if available.

M. Information on utility and repair expenses incurred by Seller for operation of the Property for each month for the preceding two years.

N. A true and correct statement of income and expenses for the Property for the last twelve months.

If the foregoing meets with your approval, please sign below to evidence your acceptance of this letter and return one original to me no later than 5:00 P.M. Central Time April 17, 1991. If we have not received an executed letter by that time, this letter shall be of no other force or effect.

Sincerely,

Frank Saletta
The Saletta Family Trust

AGREED TO AND ACCEPTED BY:

Company: _____

By: _____

Title: _____

Date: _____

Submitted by Tom Stacy
Broker's License: 287974-32 to:
Robert Starnes,
Ontra Properties
Listing Broker

Please send correspondence to:

Tom Stacy
Kemp Properties
3036 South First St., Ste.102
Austin, Texas 78704
512-447-6611

encl.: buyer agency disclosure form II

hampton.int

April 12, 1991

Mr. Robert Starnes
Ontra Properties
816 Congress Ave.
Austin, Texas 787701

Re: JADEWOOD COURT 15 DUPLEXES
Austin, Texas

Dear Bob:

We have inspected the property referenced above and have reviewed certain information obtained from you. The Saletta Family Trust, %Mr. Frank Saletta, P.O. Box 1256, Murphys, Ca. 95247, is prepared to proceed with the acquisition of the Property under the following terms and conditions:

1. The purchase price for the property shall be as follows:

$ 300,000	Cash at Closing
$ 420,000	Mortgage
$ 720,000	Total Purchase Price

See attached Exhibit "B" for addresses of property.

2. Seller shall provide non-recourse financing in the amount of $420,000 at a rate of 10% fixed, amortized over 30 years, for a term of 30 years. The Deed of Trust shall contain a provision that, upon the written request of Purchaser, Seller shall partially release, from time to time, one or more subdivided lots out of the Property on the conditions to be agreed upon by both parties.

3. A definitive Purchase and Sell agreement ("Agreement") in a form, scope and substance satisfactory to both parties shall be signed within 20 days from the execution of this letter.

4. Upon execution of the Agreement, purchaser will deliver a $15,000 "Earnest Money Deposit" to Commonwealth Land Title Company of Austin., 3415 Greystone Dr., Ste, 102, Austin, Texas to be held according to a separate escrow payment.

The Earnest Money Deposit will become non-refundable if the Agreement has not been terminated prior to the expiration of the inspection Period, as defined herein.

5. Purchaser shall have until the end of the 15th day subsequent to the receipt of the due diligence items as outlined in Exhibit A hereto and execution of the agreement ("Inspection Period") to review and approve all aspects of the Property. During the Inspection Period those persons designated by purchaser shall have reasonable access to the Property, and may review documents in the Seller's possession related to the Property.

6. Within five (5) days from the execution of this letter the Seller will deliver or cause to be delivered to the buyer the plans, records and information as outlined in Exhibit A attached and other information that may be reasonably necessary for Purchaser to review the Property.

7. Closing shall take place twenty (15) days following the end of Purchaser's Inspection Period.

8. The Seller's only liability for Brokerage fees shall be to Kemp Properties, $21,600 and Ontra Properties, $21,600.

9. Upon full execution of this letter, the Seller will not accept any other offers to purchase the Property until this letter or the Agreement expires or otherwise terminates.

10. Purchaser shall be responsible for the cost of any inspection or environmental reports concerning the Property that are commissioned by the purchaser.

11. The Seller shall pay for an owner's title policy and survey of the Property and its attorneys fees. All other closing costs shall be shared by the Purchaser and the Seller in the customary manner.

12. Seller agrees that this transaction shall be a 1031 deferred property exchange.

The Seller and the Purchaser acknowledge that this letter is not intended to constitute a binding contract for the sale of the Property and that a contract will not exist unless and until the parties have executed an Agreement approved by their respective counsel covering the terms of this letter and all other essential terms of this transaction. The parties acknowledge that they have not attempted to set forth herein all essential terms of the subject matter of this transaction and that such essential terms, including without limitation warranties and representations, have not been agreed upon by the parties and are subject to further negotiations.

Notwithstanding that either of both parties may expend substantial efforts and sums in anticipation of entering

into a contract, the parties acknowledge that in no event will this letter of intent be construed as an enforceable contract for the sale of this Property.

If the foregoing meets with your approval, please sign below to evidence your acceptance of this letter and return one original to me no later than 5:00 P.M. Central Time April 17, 1991. If we have not received an executed letter by that time, this letter shall be of no other force or effect.

Sincerely,

Frank Saletta

Frank Saletta
The Saletta Family Trust

AGREED TO AND ACCEPTED BY:

Company: _____

By: _____

Title: _____

Date: _____

Submitted by Tom Stacy
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Robert Starnes,
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encl.: buyer agency disclosure form II

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EXHIBIT A

RE: JADEWOOD COURT DUPLEXES

A. Most current boundary survey with topo, tree locations and flood plain area.

B. Most current as-built survey for improvements (buildings, parking, utilities, etc.)

C. A current rent roll acceptable in form to Buyer and certified by Seller to be true and correct as of the date of delivery.

D. All leases pertaining to the property, including any and all modifications, supplements, or amendments thereto.

E. A current inventory of all tangible personal property and fixtures owned by Seller and located on, attached to, or used in connection with the property, certified by the Seller to be true and correct as of the date of delivery.

F. Note(s), Deed(s) of Trust and other loan documents pertaining to loan(s) assumed or taken subject to:

G. All service maintenance, management, or other contracts relating to the ownership and operation of the property.

H. All warranties and guaranties relating to the Property, or any part thereof, or to the tangible personal properties and fixtures owned by Seller and located on, attached to, or used in connection with the Property, if available.

I. All fire, hazard, liability, and other insurance policies held by Seller on the Property.

J. All of the most recent real estate and personal property tax statements with respect to the Property

K. All leasing or other commission agreements with respect to the Property, which commission are being assumed by Buyer pursuant to paragraph hereof.

L. The " as built " plans and specifications with respect to the Property, if available.

M. Information on utility and repair expenses incurred by Seller for operation of the Property for each month for the preceding two years.

N. A true and correct statement of income and expenses for the Property for the last twelve months.

EXHIBIT "B"

JADEWOOD COURT DUPLEXES

15 DUPLEXES

1. 2900 Jadewood Court
2. 2901 "
3. 2902 "
4. 2903 "
5. 2904 "
6. 2905 "
7. 2906 "
8. 2907 "
9. 2908 "
10. 2909 "
11. 3000 "
12. 3301 "
13. 3302 "
14. 3303 "
15. 3304 "

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Senator DIXON. Thank you very much, Ms. Burke.

Now, ladies and gentlemen, my good friend the Senator from Missouri and this Senator will be engaging you in some questions.

I would appreciate it very much should we decide to follow up with written questions, if you would be kind enough to accommodate us with additional written answers.

First of all, Mr. Searle, in your testimony, you also seem to suggest that the Oversight Board should replace the FDIC as manager of the RTC. Is that your recommendation?

Mr. SEARLE. No, sir. I am sorry if you received that impression, Mr. Chairman.

I was merely saying that under the existing FIRREA legislation I think the RTC has a right to contract for a highly qualified professional manager and that they could quickly do that and bring that person in and allow him to in turn construct a very highly qualified professional management team, all of these people being from the private sector, and bring that kind of expertise and culture to the RTC.

Senator DIXON. I had understood that part of your testimony. I thought you had made that similar recommendation as well because I am told Chairman Seidman is going to make a recommendation to the committee tomorrow to that effect, that the Oversight Board should replace the FDIC as manager of the RTC.

Mr. SEARLE. I didn't deal with that, sir. No.

I am talking more about culture and management.

Senator DIXON. OK.

Well, let me return to your testimony. I was very interested in several things. And we had talked about that right after your testimony.

You suggest in your testimony that one of the problems we have here is an RTC that is largely staffed with career bank or thrift bureaucrats when the problem is that now we are trying to dispose of assets and what we need is people that have the professional background and experience to do that. I was trying to find the exact place where I had——

The RTC may have been suitably staffed to handle resolutions, although now its mission is asset disposition and the staff should reflect this purpose.

Is that right?

Mr. SEARLE. It's moving in that direction, yes, sir.

Senator DIXON. Do you—that's a question I wanted to ask you.

Now, Mr. Bowsher seemed to indicate the other day in his testimony that he felt that there was some improvement recently in the composition and the direction of the RTC. And I will ask you whether you have any feelings along those lines.

Mr. SEARLE. Yes, sir. I think there has been some improvement. I don't think it's been rapid enough. And I don't think they've gone nearly far enough.

But I do think they deserve credit for, as is pointed out in the testimony that followed mine, it is an enormous job and they have approached that job and have made some progress.

But my principal concern is that they don't have for the future the right kind of management and culture to deal with a sales type of environment.

Senator DIXON. Well, what would you suggest they do to have that kind of a composition.

Mr. SEARLE. Starting with the employment at the top of a highly qualified director from the private sector who has the experience and could put together the kind of company and team that can sell assets.

Senator DIXON. You say, the foregoing approach which I suggest is similar in philosophy and in fact could be achieved more quickly, if the RTC Board of Directors would delegate total authority for management of the corporation to a newly employed professional experienced executive, possessing impressive private sector credentials.

That's what you recommend?

Mr. SEARLE. Yes, sir, I do.

Senator DIXON. The new chief executive officer would be able to proceed with the recruitment of a senior management team.

And so, in other words, your point is if you had the top professional who knew what to do, you could get the staff to get the job done?

Mr. SEARLE. I believe so, yes, sir.

Senator DIXON. Now, the interesting thing I find about that is that when we had Mr. Bowsher sitting there the other day, my friend, the Senator from Colorado, put up a display over there right about where that particular display is.

And it looked like some kind of a spaghetti deal of some sort, and it was an explanation of what the RTC and its composition is right now.

Nobody can figure it out, it's so confusing, of course.

And everybody was quite impressed by that, I think, because it is very confusing.

And I think he made a speech on the floor the other day, and used that same display panel.

Mr. Bowsher suggested, I think with some sincere concern, that to change everything now—you know, there's some legislation pending, others have introduced it—to entirely change the whole substantive nature of the RTC and so forth, the composition of it and everything, Mr. Bowsher's idea was that, after a couple of years, it was probably too late to do that now.

But some of us said at that time, well, can't we find somebody that's in authority, somebody that's responsible, frankly, somebody that we can blame, one person that we can deal with.

And those that want to give him D's can give him D's.

Mr. Crocker can give him A's and everybody'd be happier then.

Couldn't we do that right now, if we would follow the recommendation that you made.

Oh, there's one of my good friends, Kim Schafer, going to put up the savings and loan cleanup team.

There it is in all its simplistic glory. [Laughter.]

Senator DIXON. That's the thing we deal with right now, Mr. Searle.

Isn't that a beauty.

That looks like it was invented by the Government, all right, I'll say that for it.

That could work if it was a computer chip, my friend from Missouri says.

But your thought is, forget about all this mess.

Just get one good person that knows what he or she is doing in here, that has the professional experience and the professional background to do the job.

Is that right?

Mr. SEARLE. I would certainly assume that if we were to, you or whoever, were to employ the right kind of experienced professional from the private sector, that would be one of his objectives, to straighten out this mess.

I recall that, by the way.

It was published in the Wall Street Journal some year or so ago.

And all my friends taunted me for agreeing to volunteer to work under these kinds of circumstances for nothing.

I think a good CEO will attack that as one of the major problems that needs to be solved in terms of good communications and efficiency.

Senator DIXON. What kind of professional background and experience?

Elaborate upon that for us a little bit.

Mr. SEARLE. I would think it would be someone who'd been in the real estate business or mortgage banking business, maybe experienced in various of these, but certainly had major experience in the broad generic term of real estate, and who had been successful in that, was a high profile person that would be recognized as successful.

I believe there are people out there that would be challenged by this job to take it, with the right incentives, of course, that can straighten this out.

And I think they would be people that would need to have been in the real estate business broadly stated.

I'm not talking about someone from the commercial banking business, like myself.

I'm not talking about people from the thrift business.

I'm talking about people that knew how to sell and market real estate.

Senator DIXON. Yes.

Because the job out there now, oversimplification, is to determine the true value of these assets on an individual and, I guess to some extent, a collective basis, and then dispose of them as quickly and as profitably as you can.

Isn't that true?

Mr. SEARLE. Yes, sir.

That's part of it.

But as you've alluded to this chart, also it's running a good, efficient corporation and straightening out this tangle whereby the communications and the other aspects of a good corporate operation are straightened out and made much more efficient.

Senator DIXON. Could you and others like minded put together a job description for the professional type person you are describing to us here?

Mr. SEARLE. With help, I think I could, yes, sir.

Senator DIXON. Well, the thought occurs that the Congress could do something along those lines to suggest to those either legislatively or in other ways what we think ought to be done.

It would be helpful to have something more of a job description than the simple paragraph you give here.

Although I think this Senator understands the point you make.

Well, that brings me to that Centrust Tower business over there.

I was out of the room, I'm sorry to say, when the testimony took place about that a moment ago.

But I wonder if we could talk a little bit, Mr. Cannon, about the Centrust Building.

That's the chart of it there.

Mr. CANNON. Yes.

Being a building in my locale, Miami, FL, it is a high profile property.

It was a high profile property when David Paul built that property.

It contains 586,000 square feet of rentable space, of which approximately 102,000 square feet is, in our opinion, not rentable, consisting of auditoriums and health clubs and conference rooms and executive offices.

The building from the analysis that we did for our foreign investor, we declined to do any work for the RTC although we're a contractor in this case, because our foreign investor was considering buying it in an early stage.

And the analysis that we came up with was that the building was throwing off approximately $6 million in income, and it had $6.5 million of expenses.

The potential income of the building over a forecasted period produced approximately $6 to 6.5 million of additional rental.

That would leave a net operating income in the future of $6 million.

Well, simple calculations can tell you that that building is no where worth anywhere near its cost of $175 million, and unfortunately was not worth on a simple rate of return you-can-put-your-money-in-the-bank comparison——

Senator DIXON. If I may interrupt at that time.

Of course we understand that, and there's a lot of assets in the RTC that aren't worth what they cost.

We all understand that, right?

Mr. CANNON. Right.

Senator DIXON. So this thing cost how much?

Mr. CANNON. The cost was $175 million.

Senator DIXON. And obviously, it's not worth that.

You figured that out, and when you look at it as an investment by somebody that has the good sense to want to do OK on the bottom line, obviously that wasn't going to work.

Mr. CANNON. Exactly.

Senator DIXON. So what did you tell him it was worth?

Mr. CANNON. We didn't get to that point, or our investors, who came over from London, inspected the building, had some preliminary conversations, if our offer was less at that time than $50 million, they would not entertain any discussions with our people, the people from London were cash buyers.

Information came back and forth, and they just decided not to get involved in the bidding process.

Senator DIXON. I misunderstand then.

I thought there was some information to the effect that somebody would have paid $45 million or something like that in cash.

I can't read from this far away with these specs.

Mr. CANNON. That happened, Senator Dixon, later on.

Discussions came on a one-on-one basis, and the First Winthrop was the fourth in the line, as we understand it from articles in the press.

Prior to that, there was the Fangel Group, those are sugarcane major stockholders Southeast Bank, another troubled bank down there.

First Winthrop then came up with a contract, as we understand, that had some cash-flow mortgage financing, $7.2 million down, $30.8 million in debt financing which would be deferred until such time as the income of the property could produce adequate return for the debt.

Senator DIXON. Well, now, but was there a $46 million cash price offered by someone?

Mr. CANNON. There were two offers, as we have heard, and I have verified by other sources, that would have negotiated.

There was other complications in their situation, but it would have been in the $40 to $46 million price range.

Senator DIXON. Well, are you saying to us, then, and this is the testimony as my staff gives it to me, unless I misunderstand, that in fact on the Centrust Tower which, as you pointed out, is a pretty well-known piece of real estate and an asset of the RTC, that the RTC really could have sold it for $46 million in cash, but in fact sold it for less than $45 million with a $7.2 million cash payment, and the rest in a cash-flow mortgage of $30.8 million, which in effect would mean you could end up getting it back again?

Mr. CANNON. That's what appears the transaction occurred to, yes, sir.

Senator DIXON. Well, how could we develop that further?

I sense that some of this you give us on information and belief, rather than on actual knowledge?

Am I correct about that?

Mr. CANNON. Firsthand conversations with those that represented that particular bank, and second was information assembled by our data base from information in the market, knowledge of that local area.

The question really lies, is the RTC, and I'm not criticizing them, and I hope that it's taken in a constructive manner by those that are involved, in the dealing of a complex real estate matter, such as a high profile building of the Centrust Towers, they should deal with all potential buyers on a simultaneous basis.

And if they're not dealing with them on a simultaneous basis, then they're precluding potential buyers from coming to the plate and offering a realistic price for the property.

If they're dealing on a one-on-one basis for a moral commitment or whatever, they may exclude a potential buyer. It's the unique transactions that occur with complicated real estate, and an astute seller will play buyers one against the other on a simultaneous ne-

gotiating basis rather than bidding process one to another to another until they——

Senator DIXON. Well, it occurs to me, and I've overextended my time, and I want to yield to my friend from Missouri, but it occurs to me that that all comes back again to the same thing that Mr. Searle and I were discussing.

That if you had the competent person at the top running this thing, with a competent staff to deal with these real estate things, both commercial and other types of real estate and so forth, that we'd get a better result on a good deal of this that we hear about and see.

Mr. CANNON. In some instances.

And you have competent people that are involved with the RTC. There's a major transaction that we're a consultant with that is working out very fine, and it's going to close.

But they're just overwhelmed.

A problem that really occurs is that if there's 20 working days in a month and an asset manager has 20 properties he can only spend 1 day per month per property, and if he or she gets bogged down for a week on one property, that person may not be able to look at that other asset for maybe several months later, because there's just not enough time.

Senator DIXON. Senator Bond?

OPENING STATEMENT OF SENATOR BOND

Senator BOND. Thank you, Senator Dixon.

Senator Dixon, I am pleased that we are holding this oversight hearing on the asset disposition policies of the RTC. I have heard the same complaints that are in the testimony from frustrated buyers in Missouri. The RTC has a very tough job, and although I am frustrated by the horror stories I have heard, I also recognize that we here in Congress would probably criticize whatever they do.

It seems to me that we need to recognize that any course of action with a problem of this magnitude is going to have pitfalls and then choose the best course. We should also recognize that endless second-guessing and demagoguery from Members of Congress has a chilling effect on any Government agency's ability to make decisions. We need to carry out our oversight duties responsibly and thoughtfully.

I am open to changes and improvements in the RTC's structure and policies and I look forward to the advice from our witnesses about what we need to do.

I might address to Mr. Searle, a question based on what the GAO testified last week.

They said that they felt part of the problem was the public members, the Secretaries of HUD, Treasury, and the Chairman of the Federal Reserve, all had substantial responsibilities, obviously more than full-time jobs, in addition to their Oversight Board duties.

Do you think that having full-time members of the Oversight Board who do not have other full-time public responsibilities is a part of the solution, or under the structure that you set forth,

could a public member Oversight Board continue to exercise adequate control over the policies of a strong private sector CEO?

Mr. SEARLE. Again, Senator, I'm trying to think how to best answer this.

The Oversight Board has working for it a very good staff. It's not a large staff but it's a very good staff, it's professional, and they are by and large conducting the oversight activities on behalf of the members of the Oversight Board.

My dealing with the Oversight Board, which is quarterly, reporting on behalf of the National Advisory Board, shows me that, one, the Oversight Board, itself, is knowledgeable and in touch with what's happening in a macro way of course, but they have very good staff people that are working intimately with the problems and the challenges.

And so I'm not concerned about the fact that these members of the Oversight Board are not very much in touch and very much involved and very much concerned, I might say, with the operation of the RTC and their oversight responsibilities.

Does that answer your question, sir?

Senator BOND. Well, I think that's——

We have other things I'd rather pursue.

I want to go on really more to the structure.

It's clear that we in Congress put in so many safeguards and tripwires that, in some instances, we put of the bureaucratic bottlenecks in FIRREA because we were concerned about the excesses of the 1988 deals with the Federal Home Loan Bank Board, and quite frankly, any CEO or anybody else is going to have to realize there's going to be second-guessing and perhaps even what might be called demagoguery for Members of Congress.

And that's going to make it difficult for any Government agency to make decisions.

But how could we structure the incentives to get properties sold so that there would be protection for the taxpayers, at the same time there would be incentives for entrepreneurs to come in and make the best possible deal in hopes that they could make a profit?

It's a nebulous question, but I wanted to give you the background that Congress is going to be shooting at the RTC no matter what it does, even if it were in somebody's view a 100-percent right, there'd be people criticizing it.

Based on your experience, how should we change the structure?

Mr. SEARLE. I don't know that I can refer to my own experience in terms of how you're going to compensate people and properly incent them.

I'm not in any way an authority on how you can pay people more than what I'll call Government scale, based on performance and disposition of assets, but I guess there are quasi-government corporations where this has been done, where there was good performance, and I have no objection to paying people for saving the taxpayers billions of dollars.

Pay a million for a billion, or whatever.

That's a little large, I know, but nonetheless, I think there must be ways where the Government can create a compensation situation based upon performance, and I think that can work negatively as well. If people don't perform, they should not be paid as much.

In terms of, I think, Senator, it was a two-part question in a sense. And that is, what about controls.

I think, as I said in my oral statement, that there's going to be bigger risk reward situation if you put entrepreneurial types in charge of this operation, which I strongly urge we do.

That being the case, some sort of oversight, monitoring, scrutiny on an ongoing basis certainly must be in place.

As I recall, Comptroller General Bowsher did say that endorsing some sort of oversight activity must be in place on a continuing basis.

And I think it has to be heightened if you go to this kind of entrepreneurial approach, because the risk is going to be somewhat greater.

Senator BOND. I'd like to get comments specifically on that point from the other panelists.

Mr. Crocker.

Mr. CROCKER. I appreciate the chance to comment, because my perspective, as a contractor, is that a lot of the things that we're proposing on an operating level are already in place.

As far as the emphasis on marketing, I can guarantee you, as a contractor, we are under tremendous pressure to manage and market these assets skillfully.

And Lemar Kelly has been quoted on many occasions as saying that we're not here to manage and hold them. We're here to skillfully manage and sell these assets.

Certainly William Seidman has gone public with his statement that certainly we are going to sell these assets.

The form of contract which we have highly incentivizes us that we are going to sell these assets.

The form of contract which we have highly incentivizes us to sell assets for cash and this is our primary source of profit.

It's a competitively bid contract, and unless you can market and sell assets, you're not going to make a profit from the contract.

The policies which have been established as to how the assets are exposed to the market, in my opinion, are exemplary.

You have to broadly expose the asset to the market. You cannot steer deals.

The FADA was criticized for steering deals to particular people.

We cannot offer an asset to just a particular buyer.

Everybody has to know that that asset is for sale.

Everybody has to have a fair chance to make a proposal as far as how they would like to buy that.

We compare cash offers with seller-financed offers and come up with a recommendation.

We have enormous delegated authority to the contractor, the entrepreneur, to make deals happen within the strategic plan for the asset which we have gotten approved by the RTC. So we can make it happen all the way.

The entrepreneur has control over the asset to make it happen, if it's within the budget and the constraints that have been established by the plan which we develop and upon which we get approval.

There's a proposal which has been implemented that the prices dropped 20 percent below appraised value almost immediately, if that's what the market is in the offers you're getting.

Six months later, you drop the price another 20 percent below appraised value. You're trying to find the market.

It's like a woman's discount dress store where you go in every week, they drop the price.

At some point, you will find the level at which the market is willing to pay for that particular asset.

Please keep in mind, these are, in many cases, very complicated difficult assets with unique problems.

Senator DIXON. I wonder if my colleague would let me jump in there?

Senator BOND. You're just most welcome.

Senator DIXON. I thank the Senator from Missouri.

It's interesting you should touch on that, Mr. Crocker.

Because when the Senator from Missouri had concluded, I wanted to take something out of the testimony of Cecilia Burke, the assessor and collector of taxes for the County of Travis in the State of Texas in Austin, because something that she said in her prepared text, which she didn't have time to elaborate upon in her oral testimony interested me before.

I'd like to quote from it.

She says:

> The RTC practice of announcing price reduction schedules in advance, except for its prime properties, results in the RTC ultimately receiving substantially lower prices for its properties. As most RTC properties are not prime properties, stating there will be a 20-percent reduction in 30 days and a 40-percent reduction in 60 days for properties that do not sell seems to be designed to encourage prudent investors to wait for the final price reduction before submitting offers. The 80–60–50 program described above should be terminated immediately as its only effect is to guarantee lower prices received for the properties. This type of activity results in the reduction of value of similar properties held by the private sector.

And, incidentally, that's going on in the country, and the reduction in what the RTC ultimately receives for the properties.

And I go on to quote from her:

> A good example of this involves the Ashton-Green Condominiums in Austin. Prices on these units fell from $90,000 and $95,000 in 1985 and appeared to stabilize at between $55,000 and $60,000 in 1990.

Now I'm quoting you directly, Ms. Burke.

> The RTC offered its inventory in the project under the Affordable Housing program and began cutting prices as low as $30,000 because the properties wouldn't move. It's common knowledge.

Ms. Burke says as a person from that area,

> It's common knowledge there is no private sector financing for condominiums in Texas, and the RTC did not offer owner financing. The result of the RTC marketing tactics is that the market value for all of the privately owned units in the project is now $30,000 to $40,000, the local taxing entities suffer a 30- to 35-percent reduction in revenues because of the RTC policy on the entire project.

Now here is a lady of competence in an area that knows her properties there who is suggesting to us that the policies are very, very flawed.

That makes sense to me, what she's saying, and I'd like to have your response.

Because here's something that I suppose one would accept isn't worth $90,000 to $95,000 any more. I've seen the drop in the market around here, and it dropped to 55, 60, when you were leaving it alone presumably if you had of handled it right, if I understand her testimony, at that point, with the proper type of private sector or the type of financing we could do for the RTC, you probably could have moved it at that price. Now they're moving it at $30,000.

Well, I mean, see, I wouldn't give that an A, either on the pricing or the selling side.

Mr. CROCKER. OK, let me respond.

No. 1, the rule that was quoted is not my understanding of the rule at all.

You have to wait 6 months before you drop the second 20 percent. In the meantime, you've exposed it to the market.

You have to wait 18 months, 18 months before you drop it the additional 10 percent.

We can bring in proposals at any time that are below the amounts that we're authorized to sell for and get approval from the RTC.

But I think you have to understand the huge inventory of assets which are competing with the RTC's assets, and the fact that the prices which have been established by appraisal or loan amounts are really not relevant to what's happening right now with a huge inventory.

Finally, I want to——

Senator DIXON. Can I interrupt you, Mr. Crocker?

Mr. CROCKER. Sure.

Senator DIXON. I wonder if my friend from Florida, who wants to ask some questions and I'm interested in his doing so, would let me go vote, and then I'll be right back, and I'll tell them you are on your way.

And whatever the Senator from Missouri wants to do.

Will you all excuse me?

The Senator from Florida.

Senator GRAHAM. Yes, Mr. Crocker.

Mr. CROCKER. I want to touch on the Affordable Housing question that was raised, because that's an absolutely vital issue for you all to understand.

We handle a lot of multifamily properties in the Affordable Housing program in our Texas portfolio.

In fact, I would guess that every apartment house in Texas is under the Affordable Housing program.

We appraise those properties with and without the deed restriction in perpetuity under the Affordable Housing program.

Namely, that 35 percent of the units are to be available for low- and moderate-income housing qualified individuals for the life of the project.

The way that works is for the first 90 days, you offer it under Affordable Housing. If nobody expresses any serious interest, then it can be sold not subject to this program.

If anybody expresses serious interest, they've got an additional period of time to document their offer.

Most properties receive offers. Most offers receive an indication of interest.

The difference in appraised value is anywhere from a 30- to a 50-percent discount with that deed restriction applicable.

Buyers will discount the price by that amount in order to buy it under the Affordable Housing program.

So I think you have to keep in mind that the Affordable Housing program, by its nature, has a huge impact on its tax value, and that as long as it's subject to those provisions, there's going to be a serious difference in market value between selling it with and without the deed restrictions.

Senator GRAHAM. Did you have any further questions, Senator Bond?

Senator BOND. I had wanted to find out, we were dealing with my general question on the structure, and I thought some of the other panelists might want to have some comments on that before I run off to vote.

Mr. HICKS. Senator, may I comment?

I think that the structure, I would agree, as an entrepreneur, that we need more entrepreneurial input, as I said in my testimony. And I certainly think that it would help at the top.

But you're talking about an enormous job, and I would speculate that it might be well to consider regional entrepreneurial decision-making where you've got people right in the area that can make a decision.

If you leave it to one guy at the top, he's going to have his boat loaded just running the thing, so I'd recommend a regional approach.

The second thing, Senator, before we leave, I do want to emphasize that of the most important thing that Congress can do is aid and abet the RTC in setting up a financing program, because there's no money out there. There's no money to borrow so we can't do cash.

So I think innovative constructive ways to finance these properties is going to go more to holding the value up, No. 1.

And No. 2, to move it back in private hands.

Thank you.

Senator GRAHAM. Mr. Cannon.

Mr. CANNON. Real estate, as we all know, is unique as compared to any other asset. You have to go to it, it cannot go to you.

Real estate should be looked at on a local basis, and I believe the problem, as I've observed, is the identification and classification of that, and the marketing it on a local basis, categorizing it, meaning single family homes and residential properties, should not be looked at on a national basis.

If one picks up the telephone, you go through all sorts of watts lines, ends up in Texas, St. Louis, and Louisiana for a property that's right down the street from another property that you have to call in other parts of the country.

And I think that's the confusion.

People like to deal with people on a face by face basis, so by dealing with local brokers on local properties, I think they would sell.

Large commercial properties obviously can be marketed on a national basis.

I think they need to be packaged individually because you're dealing with individual assets.

I believe that they should draw upon the consultants that they have in place to assist the asset manager in that decisionmaking process in order to implement the sale.

When those transactions are consummated by utilizing on a team basis, rather than an individual basis, I believe those transactions do get consummated.

On an overall basis, the problem seems to be overwhelming, but I think it's an organizational problem where everything is put into one basket, and it's difficult to find the fish that one's looking for.

Senator BOND. Any other comments?

Mr. CROCKER. I'll comment that it's obvious that the organizational structure is overly complex and it needs reorganization where there's clear lines of authority and responsibility and you don't have all this mix of responsibility lines.

Senator BOND. Thank you, Senator Graham.

Senator GRAHAM. I apologize for arriving late and having to leave early.

But let me ask a couple of questions.

One, there are some other alternatives as to how to deal with a circumstance such as we have had with the avalanche of failures in the S&L industry.

One of those alternatives would be to handle this as a bankruptcy case in which each individual institution would be disposed of as a failed corporation in a commercial area and would be disposed of.

There may be some other fundamental alternatives to dealing with this issue, other than the one which was selected which was essentially the FDIC model.

If you were going to go back to a blank sheet and said how to handle the assets, particularly when they have moved from conservatorship into receivership, what alternative would you select?

The one we have, the FDIC model, bankruptcy, or something else?

Mr. HICKS. Senator, if I may.

I believe that there might be a way to continue the conservatorships and in fact augment them, because I think if we can transfer assets, this goes back to what my friend was talking about, that if you can put it closer to a local level.

Let me give you the picture.

If you had some loans in Texas and they were sold to a financial institution in Chicago, this means that you've got to deal with that institution in Chicago, very complicated.

I think Ms. Burke was telling us earlier that you're talking 6 weeks just to get some kind of response out of them.

Now visualize that if those now defunct institutions would transfer back to the conservatorships within the local area, so that the local broker could go and negotiate the deal.

The guy knows how to underwrite it, he knows the people, he knows the market.

It would facilitate tremendously moving a large volume of particularly the smaller assets.

So I think that could be looked at.

It's not necessarily rather than, its an augmentation of where we already are.

I don't see anything to be gained by completely redoing it and coming at it through a bankruptcy or some other means, but I do think that there's a lot to be said for that process.

Senator GRAHAM. I'm sorry.

I just was told we have 7 minutes left on this vote, so I'm going to have to leave to vote.

I will recess the hearing and it will reconvene when Senator Dixon returns, which should be momentarily.

[Recess.]

Senator DIXON. Not only do we have rollcalls interrupting us from time to time, now the Senate elevators are broken. [Laughter.]

So you have to come up on a freight elevator.

While we're fixing the RTC, perhaps they'll look into fixing the Senate elevators.

And the second panel is John McCrocklin, Real Estate Asset Information Management Systems in Dallas.

Paul Barru, National Association of Home Builders, Littleton, CO.

Hazel Lewis, Lewis & Associates, Arlington, TX.

And Pat Casey, McDivitt & Casey, Oklahoma City, OK.

And we thank you all for being here today, and we'll start with you, Mr. McCrocklin.

OPENING STATEMENT OF JOHN H. McCROCKLIN, CCIM, CRB, ALC, REAL ESTATE/ASSET INFORMATION MANAGEMENT SYSTEMS [RE/AIMS]

Mr. MCCROCKLIN. Thank you, Chairman Dixon, for the opportunity to appear before the committee today.

And I would like to request that my full written testimony be included in the Congressional Record.

Senator DIXON. In all of the testimony, may I say to the four witnesses, is reproduced in full in the record.

Thank you, sir.

Mr. MCCROCKLIN. As I spent time preparing my remarks this morning, it was very difficult to control my emotions, especially the anger and frustration that I have felt in dealing with the Resolution Trust Corporation.

However, knowing that little would be gained by these emotions, I've attempted to constructively outline and describe three areas which I feel must be addressed before significant improvement can be made in improving the management, perfection and disposition of properties handled by the RTC.

First, I've outlined our participation in the FIRREA 501(c) Affordable Housing program, and the problems that we've encountered with the lack of factual information regarding the properties being offered for sale.

This, coupled with the extensive time delays that we've encountered since assembling the properties for bid and the 3-month evaluation period required to determine who would be awarded the winning sealed bid, are unacceptable to the market.

Changes must occur through better communication with potential purchasers as to the status of income and operating statements, as well as what to expect throughout the entire process.

Second, I've described in detail the bulk sale of the remaining REO portfolio of an entire failed thrift, Bright Banc Savings.

As my clients can attest, their patience has been taxed to the outer limits.

Our clients have patiently negotiated since last September, when they were told or led to believe that a negotiated sale was imminent.

Since that time, we have seen the terms and integrity of the entire portfolio fluctuate wildly, including the removal of two loan portfolios, truck terminals under net leases, individual land parcels in the Bright Realty Corp.

An excellent example is the waste of the Bright Reality Corp. Today, there's no redemption value or employees, per se, left in Bright Realty Corp. which, at the time we initiated discussions, was a going concern with a statewide reputation for efficient management and liquidation of its assets and of significant value to a potential purchaser.

To date, we have not received any formal notification that any of the five bids that were originally submitted to the RTC on May 24 had actually been accepted.

However, last night, by facsimile transmission, the RTC notified us that their bidding process would be reopened for an additional 2-week period to allow bidders access to the last appraisals.

Most of these appraisals are over a year old, so none of the bidders will actually gain any additional information to change their bids.

In fact, the RTC made summaries of all the offers that had been submitted on the individual parcels of the portfolio available to the bidders.

This is a much better indication of the value than an appraisal.

If this process is extended for any period of time, I feel that our clients will most likely withdraw, even having spent 9 months in this process.

Many of the problems that we have identified in both bulk sales could have been prevented or eliminated through the decentralization of the bulk sale process and improved internal and external communication.

The bulk sale process needs to be outlined, defined, and managed on a regional level.

Further, I feel that the Southwest Regional Office of the RTC should be delegated full authority in determining whether bulk sales in its region or negotiated transactions are handled on a sealed bid basis.

It is my belief, had this been done, that Bright Savings REO portfolio would have been consummated no later than January 15, 1991, and for a much higher value than it will actually yield presently.

This process has emphasized the anger and frustration felt by the American public as it has attempted to acquire individual assets from the RTC.

If the RTC continues to deal with potential purchasers of property in this manner, the volume and recovery value of its assets will suffer greatly.

Finally, I would like to address the issue of management information technology which I consider the greatest crisis of all.

However, it is not restricted only to the RTC but to financial institutions, as well.

Although the RTC has engaged a contractor to improve the marketing and management information services, it appears as though it will provide only a summary or inventory of pertinent data that will be required to increase the management and disposition efficiency of these respective entities.

For instance, having met with numerous RTC personnel and financial institutions, it is my conclusion that the knowledge base required to successfully collect and distribute information for marketing, managing, reporting and disposition of assets is not being captured.

Existing systems, including RTC's newest one, have an accounting rather than a marketing focus and, in my estimation, stop short of incorporating the latest technological advances for use in marketing and management of assets.

If this type of technology was incorporated, it would provide information in a very easy to use format that an individual could access, rather than through the reporting interfaces that are currently being used.

This is not the fault of the contractor, but the bid specifications when they were written.

When the RTC's new REOMS system is implemented, it will be an improvement over existing systems.

However, it could be vastly improved by the integration of newer technology that captures and consolidates more specific data at an institutional level.

In other words, the RTC should not look to one system or one technology as a cure-all, as the bid for the computer systems did, but seek to complement and enhance their performance through the integration of technology.

[Prepared statement of John H. McCrocklin follows:]

Testimony of

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Concerning Issues Involving the Oversight of The Resolution Trust Corporation

Before the Sub-Committee on
Consumer and Regulatory Affairs
United States Senate Banking Committee
June 19, 1991

Good morning Chairman Dixon and members of the Committee, my name is John H. McCrocklin. I am a principal in the firm of Real Estate Asset Information Management Systems, Inc. also known as *RE/AIMS*, located in Dallas, Texas. I would like to thank you for the opportunity to appear before the United States Senate Committee on Banking, Housing and Urban Affairs to share my experiences and ideas regarding the disposition strategies and management information systems utilized by the Resolution Trust Corporation and the Federal Deposit Insurance Corporation.

QUALIFICATIONS

In order to qualify my statements, I would like to give you some information regarding my real estate credentials and experience with management information systems. These credentials are offered solely as evidence that I am speaking from actual experience.

My partner, Elizabeth Sink, and I have been involved in two large bulk sales with the Resolution Trust Corporation on a sealed bid basis along with two other major assets unsuccessfully marketed on a seal bid basis by the Federal Deposit Insurance Corporation. Our firm, *RE/AIMS,* is an Alliance Partner of Lotus Development Corporation in the development of the ATTACK- Management Support System, which is an asset management information tracking system designed to assist financial institutions, insurance companies, pension funds, governmental agencies, and real estate asset management firms with the management, marketing, disposition and reporting functions for loans and real estate owned. When most people think of Lotus they think of the Lotus 123- spreadsheet program. However, ATTACK- utilizes a new Lotus software platform

known as Lotus Notes which we feel will become the new standard for excellence in communication software in the next decade.

I have a Bachelor of Business Administration degree with a concentration in real estate and insurance from Southwest Texas State University, President Lyndon B. Johnson's alma mater. Presently, I hold five national real estate designations: (1) Certified Commercial Investment Member, CCIM, awarded by the Commercial Investment Real Estate Institute; (2) Certified Real Estate Brokerage Manager, CRB, awarded by the REALTORS National Marketing Institute; (3) Accredited Land Consultant, ALC, awarded by the REALTORS Land Institute; (4) Master Farm and Land Appraiser, MFLA, awarded by the National Association of Master Appraisers; and, (5) Master Senior Appraiser, MSA, awarded by the National Association of Master Appraisers. Each of these institutes and associations requires a minimum educational curricula of four courses and a maximum of eight, demonstration reports or appraisals on completed transactions and/or assignments, as well as documentation of a required minimum dollar volume of closed real estate transactions for the CCIM and ALC designations.

In 1988 and 1989, I was awarded the Lone Star Trophy by the Texas Association of REALTORS for the outstanding commercial real estate transaction of the year for the State of Texas. Both of the transactions involved real estate owned (REO). In the past I have served as an adjunct professor of Finance for Southwest Texas State University and currently serve as a senior instructor for the Commercial Investment Real Estate Institute of the National Association of REALTORS and the REALTORS Land Institute.

My remarks are offered constructively to aid the Senate Banking Committee and the Resolution Trust Corporation in identifying problems, solutions and issues affecting the management, disposition and reporting of assets under its control.

BACKGROUND

The Resolution Trust Corporation has dealt with a gargantuan task since its creation in August of 1989. The job of inventorying assets and perfecting asset value has increased at a feverish pitch with no let up in sight. While some critics would replace the Resolution Trust Corporation with another governmental agency or a "mega" disposition agency charged with the responsibility to manage, market and dispose of all governmental assets for seventeen separate agencies, I disagree. There are many areas of policy and disposition strategies that if modified might improve the RTC's efficiency when compared to the economic alternatives. I will attempt to restrict my remarks to three areas:

I. FIRREA 501(c) AFFORDABLE HOUSING BULK SALES

II. BULK SALES OF MULTIPLE ASSET TYPES

III. MARKETING & MANAGEMENT AUTOMATION

It is easy for one to be critical of the problems without identifying potential solutions, therefore, I will utilize a constructive format that will hopefully present a summary of salient issues. In order to be as succinct as possible with my remarks, I have incorporated a table that will illustrate each topic by summarizing the:

PROBLEM	SOLUTION	ISSUES

of each problem as I perceive them.

I. FIRREA 501(c) AFFORDABLE HOUSING BULK SALES

One of our clients desired to participate in the first 501(c) Affordable Housing offering, after the clearing house process was initiated, with approximately one hundred ninety-one (191) apartment complexes in the Southwest Region of the RTC. After reviewing the complexes for potential properties that met our client's investment parameters, we identified twenty-three (23) apartment projects containing over four thousand six hundred thirty-seven (4,637) units for closer examination. These units required a minimal level of physical and financial due diligence prior to submitting a sealed bid offer. This process started in late October or early November of last year and was to have completed when our bid was submitted on January 16, 1991.

The following chart is a summary of what any prudent purchaser would have been required to complete in the normal course of the sealed bid process. My partner and I spent over six hundred and seventy-five man hours assembling the sealed bid proposal and completing due diligence on these prospective apartment units.

PROBLEM	SOLUTION	ISSUES
1. Identify an acceptable portfolio of properties from one hundred ninety-one potential complexes	Physical inspection of those assets that were identified as meeting minimally acceptable standards	Expense of assembling a portfolio and completing due diligence without assurance that bid would be acceptable

PROBLEM	SOLUTION	ISSUES
2. Request current and financial data on each of the identified assets from nine different sources	Contact nine different asset management, property management and brokerage firms to request compiled data	The individual contractors assigned to the assets were not cooperative, save and accept one. It took constant "hounding" to get receipt of the data.
3. The data received was unaudited and contained discrepancies	Physically audit each financial statement that was received in addition to the general information in order to reconcile differences	Financial statements are not standardized Marketing brochures assembled were based on annualized projections of the last months operating statement which did not account for property taxes insurance or management fees
4. Affordable Housing Rents schedules were mentioned by only one RTC representative and rents did not compare the variances with existing schedules, including a different schedule for each city	Build financial models that compared the maximum Affordable Housing Rents with existing rents and capitalize the difference	Affordable Housing guidelines changed during the bid process and financial models had to be altered, thereby creating double due diligence

PROBLEM	SOLUTION	ISSUES
5. Lenders required financial underwriting criteria to be applied to existing income levels	**Extend the financial model to meet a 1.2 debt coverage ratio on existing income**	**Forty year deed restriction required made the lender require a fixed affordable housing reservation with no ability to float the allocation among the complexes** **Debt coverage ratio increased if AH deed restriction wasn't removed upon foreclosure**
6. Calculate the maximum loan amount for a blanket mortgage as well as individual properties	**Apply a known mortgage constant to the projected annual debt service to determine the maximum loan amount**	**Underwriting fluctuated over the inspection period due to the volatility in the financial markets**
7. Calculate the estimated repairs for deferred maintenance on each project over a large geographical area (four major cities)	**Determine how much deferred maintenance had to be completed in order to satisfy the lender**	**Expense of assembling financial estimates without having a firm contract or assurance that the bid would be accepted**
8. Calculate the bid price for each property and for the portfolio in a manner that would explain the bid in detail to the RTC	**Compile the estimated bid price based on the maximum loan and estimated repairs and run financial analyses on each estimated price**	**Bid price was subject to projection based on current operating data, statements had wild fluctuations**

PROBLEM	SOLUTION	ISSUES
9. Meet the sealed bid deadline for the RTC with completion of all required forms	**Submit the completed bid package with principals, lender and equity sources identified**	**Estimate the response time for lender and equity source to minimize bid expense if bid declined**

Additionally, management companies that were being interviewed by our client spent additional time identifying problem areas that needed to be corrected or improved immediately upon acquisition. If we had followed the RTC guidelines, which required the financing to be in place when the bid proposal was submitted, our client would also have incurred a $2,500 underwriting fee per property plus a $3,000 appraisal fee or a total of $132,000. All of this financial expense would have been predicated on the *possibility* of securing the portfolio.

It took the RTC from January 16th until the third week in April to identify which bids were acceptable. Part of this problem, as we were informed by RTC representatives, was the result of the RTC informing prospective purchasers that they could select any portfolio combinations for inclusion with their sealed bid. This was done to encourage a greater number of participants in the bidding process. Admittedly, this might have encouraged a greater participation from potential purchasers for the first sealed bid sale, but it also may have eliminated a greater number from future bids as well.

For example, our original bid on the twenty-three complexes was in excess of fifty

million dollars so we were asked to include a breakdown of individual prices for each complex with the bid. The original bid contained a mixture of A,B, and C class units so a breakdown for each individual complex might not have been representative to the total portfolio.

When the RTC took three months to determine which bids were acceptable, we learned that they were having trouble evaluating the bids. Evidently, the RTC had difficulty evaluating the bids because the bids received covered a wide variety of complexes, none of which were identical. Most bids also contained a wide range of quality. The RTC elected to break out the price per unit as one criteria for determining whether the bids were acceptable or not.

At this point, subjective evaluation entered the process. A bid might be eliminated simply on the basis that the per unit price, on face value, wasn't as high as another bid. Included in our bid were four complexes, located in Austin, Texas, that were A and B Class units. The RTC awarded four of those complexes in Austin to another bidder. This same procedure followed with units that we identified in Houston and Dallas. The RTC felt that our client would accept the balance, nine complexes, of the bulk after removing all of the upper-end units. The portfolio mixture of our bid had been selected so that the economic impact of the affordable housing rents could be distributed or applied to a larger number of upper-end units, thereby offering a higher quality product to the public for the same price.

The RTC notified us in late April that our original bid was not accepted, but we were being awarded nine out of the original twenty-three complexes. Accepting a portion of the

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portfolio destroyed the integrity of the original bid. The RTC had removed mainly A, B+ and B units. The new mixture of units also increased the original underwriting criteria which in turn eliminated our original lender.

When the mixture of the units changed and the price dropped below fifty million dollars, our lender could no longer provide private placement funding. The RTC was not aware of this situation, even though the RTC guidelines required our lender to be identified by name, contact and telephone number in the contract when the bid was submitted. The increased debt coverage ratio, 1.2 to 1.3, alone dropped the loan value of the portfolio by almost one million two hundred thousand dollars.

Presently, we are still engaged in trying to finalize a price acceptable to the RTC, our client and the lender. Although we are prepared to pay cash, the RTC has not been willing to negotiate on the price for the decline in value that has occurred since our bid was submitted in January, even though these economic changes were beyond the control of our client. The entire integrity of the portfolio has changed along with the elimination of the original funding that we had worked so diligently to secure. It might appear to a disinterested third party reviewing our bid, that we are simply trying to lower the price of the bid. However, we have reminded the RTC that over six months has passed since the initial inspections were completed on each individual complex. Presently, one of the complexes, according to third party management representatives, is being run by a drug gang. Another one of the complexes has had a fire in one of the apartment buildings, destroying five units, and another was discovered, after the bid had been submitted, to have been constructed over a land fill. None of this information was provided by the RTC

or its representatives. All of these factors have changed the original value of the bid, but none have been recognized by the RTC to date.

If our clients did not already have a sizeable amount of time and money invested they probably would have walked away from the transaction months ago when they were told the bids would be evaluated in a two week period.

AFFORDABLE HOUSING SUMMARY

In my estimation, the sealed bid process in the FIRREA 501 (c) Affordable Housing could work more efficiently if the RTC identified several predetermined portfolio combinations for consideration by prospective bidders. If the prospective purchaser doesn't like one of the complexes, it could be removed from their bid. However, the RTC would look first to those bids that included all of the complexes identified. Secondly, a minimal level of financial and physical due diligence should be provided to potential bidders to assist with the bid process. I would caution against using this due diligence as the sole source of inspection information. In the case of the Bright Banc Savings Association portfolio which I will describe in more detail, one of the contractors hired to complete due diligence on the REO portfolio committed over four hundred and fifty four errors in their work prior to being terminated. This may be the exception, but it identifies the potential hazard of utilizing only one source of information for an inspection.

The record should reflect that we raised these issues with the RTC as they were identified and found the Southwest Regional Office of the RTC to be receptive to the

suggested changes, however, it did not have impact since the bid was already in progress. While I would like to compliment the RTC's Southwest Regional multi-family representative, Wayne Reed, for attempting to facilitate the sale in every means possible, we still feel without question, that the process itself is a quagmire of "red tape" that perpetuates unreasonable time delays and limits wider participation by the public.

PROBLEM	SOLUTION
1. Bulk sale portfolio	Predetermination of an acceptable portfolio for bulk sales Bidders will be bidding for identical portfolios for easier evaluation and comparison of competitive bids
2. Structural and financial due diligence	Structural and financial due diligence completed in advance will assist purchasers in determining maximum loan amounts and deferred maintenance to be completed for lenders Most purchasers will want their own inspection teams to verify reports completed by contractors, but this will increase participation from parties that don't want to risk fees on a bid that might not be acceptable

PROBLEM	SOLUTION
3. Approved price for cash and/or terms	If the bidders are competing on equivalent portfolios, evaluation of cash sales prices would be streamlined, additionally, a terms price might increase bidder participation if Fannie Mae and other lenders continue to increase underwriting guidelines because of the forty year affordable housing deed restrictions

II. BULK SALES OF MULTIPLE ASSET TYPES

In August of 1990, one of our clients acquired a 316,000 square foot office building in Dallas, Texas for $21,000,000. This asset was originally part of the Bright Banc Savings Association portfolio that was moved under the control of the Resolution Trust Corporation when Bright Banc Savings Association went into receivership. After closing the sale on this asset, my partner and I approached the RTC regarding the idea of one of our other clients buying the remaining portfolio in bulk. During September and October we had some preliminary meetings with the RTC while they discussed the possibility of completing a negotiated bulk sale. In order to determine whether the bulk sale was feasible, they had to assemble some internal due diligence on the real estate owned, REO, portfolio, five loan portfolios (performing and non-performing loans), and Bright Realty Corporation. The issues regarding the Bright Banc portfolio could be identified as follows

for a negotiated sale:

PROBLEM	SOLUTION	ISSUES
1. Identification of the portfolio	Provide a list of all of the real estate owned, and the five loan portfolios	Locate the original files Assemble marketing information and financial data for each asset to be included in the bulk Determine the marketability of the assets
2. Locate general and financial data on each asset identified in the portfolio	Provide a list of internally audited general and financial data on each asset to allow a potential purchaser to complete a preliminary review of the information	Determine an estimated recovery value for each asset along with a identifying the physical location of each asset
3. Audit the assembled data for accuracy	Select a due diligence team to verify the accuracy of the information supplied and eliminate discrepancies	Verification of the information supplied for accuracy
4. Determine if the assets had received sufficient "Exposure" to the market	Verify how long each individual asset has been exposed to the market	Determine whether the assets had received "adequate market exposure" in order to generate a "negotiated" sale

PROBLEM	SOLUTION	ISSUES
5. Determine how much of an "assistance" or management agreement a purchaser would need to offset the substantial negative cash flows of the portfolio	Disposition of a large portfolio and elimination of a significant negative cash flow without engaging an asset management agreement	The assistance would have been equivalent or less than the cost of the asset management contract that was being negotiated and would have offset the large negative cash flows.
6. Determining how to handle a "Soft Closing" thereby allowing the purchaser to address: (a) environmental issues (b) legal issues (c) close by end of 1990	Establish a set procedure for closing the sale by 12/31/90 with a provision for "putbacks" or "cost to cure" on problems identified after closing.	Determine procedural guideline for closing "Soft" closing would make the final determination of value subject to change Environmental and legal issues had to be resolved

In late October, our clients came to Dallas for a meeting with RTC representatives and learned that the contractor, engaged to complete the initial due diligence, generated a report with over four hundred and fifty-four (454) errors. Therefore, the RTC would not release any of the report and engaged a second contractor to complete the due diligence. The focus of our discussions centered on how a sale could be negotiated, what the structure of the portfolio would be and a brief overview of the terms that the RTC would be willing to consider, fifteen percent down payment, thirty year amortization, and a

seven to ten year balloon. At that time our clients were extremely interested in pursuing a negotiated sale of the entire portfolio.

The identification of the portfolio was the primary problem that had to be dealt with. Bright Banc had real estate owned, a real estate subsidiary, and five loan portfolios totalling just under $1 billion in book value so the RTC had engaged two independent contractors to examine the loan and real estate portfolios. When we had a second meeting with the RTC in November of 1990, the report on the real estate portfolio had been completed along with the due diligence on the loan portfolio. However, the RTC never made the information on the loan portfolio available even though we had expressed an interest in purchasing two of the five portfolios, which contained the non-residential loans, both performing and non-performing.

At a December meeting, our third, we continued to express our interest in a negotiated sale and that our client was willing to put up over a $1 million in escrow, as requested, while the contract price and terms were negotiated. We were also prepared to close by the end of the year, another requirement that the RTC had proposed. Our client was concerned that if we were unable to get the transaction negotiated and closed by the end of December or the middle of January, the RTC would be obligating itself to large disposition fees in two asset management contracts, one for the real estate and one for the loans, that it was in the process of negotiating. Throughout the negotiations, it was apparent that the sales center and the contracting office were not communicating with each on of their respective progress. The sales center had on two occasions notified the contracting office of our concern, but to no avail.

We were reassured on several occasions that we were not to be concerned with the asset management contracts, that we would not be impacted by them and that the sales office had arranged to have them become effective only if the sale could not be negotiated. We were told that we would have to come back in January to finish negotiations even though we had fulfilled every request of the RTC for the December 1990 meeting.

During the middle of January 1991, after the RTC awarded asset management contracts to Financial Management Resources, Inc. and BankOne on the REO and loan portfolios, another meeting was held at the RTC office in Dallas. Again, we exhibited our willingness to close the sale. Our client also expressed an interest in acquiring the Bright Realty Corporation, BRC, in addition to the REO and loan portfolios, and had even arranged to have their human resources manager fly to Dallas to meet with the employees and review individual contracts, salary schedules and benefits so that each of the employees would not be disturbed or displaced as the sale was closed. This meeting with BRC employees never took place because the RTC refused to sanction the meeting until a sale had been escrowed. Almost all of the BRC employees have been terminated and the RTC has not, nor will it, received any value for what once was a very viable economic entity. We also learned in the January meeting that the Washington office of the RTC felt that the portfolio had not been adequately exposed to the market (even though all of the assets had been marketed for over two years), for the purpose of perfecting value, and it contained high profile assets, therefore, the RTC would have to arrange for a sealed bid on the real estate owned portfolio only. Bright Realty Corporation and the loan portfolios were not included.

The problems, solutions and issues changed when the sealed bid process was approved:

PROBLEM	SOLUTION	ISSUES
1. Identification of the portfolio	Provide a list of all of the real estate owned, and the five loan portfolios	Locate the original files Assemble marketing information and financial data for each asset to be included in the bulk Determine the marketability of the assets
2. Locating general and financial data on each asset identified in the portfolio	Provide a list of internally audited general and financial data on each asset to allow a potential purchaser to complete a preliminary review of the information	Determine an estimated recovery value for each asset along with a identifying the physical location of each asset
3. Auditing the data for accuracy	Select a due diligence team to verify the accuracy of the information supplied and eliminate discrepancies	Verification of the information supplied for accuracy
4. Determining if the assets had received sufficient "Exposure" to the market	Verify how long each individual asset has been exposed to the market	Determine whether the assets had received "adequate market exposure" in order to prevent the appearance of any impropriety

PROBLEM	SOLUTION	ISSUES
5. Review the proposed asset management contracts and determine what the economic impact would be	Conditional acceptance of the contract subject to the final evaluation of the sealed bids for the bulk sale portfolio	Cost of implementing an asset management contract with a negotiated or sealed bid in progress
6. Establishing a sealed bid procedure that would outline procedures for: (a) Pre-qualification of bidders (b) Rules for submitting the bid (c) Evaluation of the bids	Establish a set procedure for pre-qualifying the bidders, identifying how the bids would be submitted, who would hold the escrow, and how the bids would be evaluated	Determine procedural guideline so that any potential bidders will have an equal opportunity to bid Determine how the bids are to be evaluated

It took approximately forty-five days to formulate the sealed bid process for pre-qualification and identification of the assets included in the bid. At this point, our clients expressed their concern about the amount of time that they had already spent in pursuing a negotiated sale and whether it was still worth reviewing and bidding the portfolio with no assurance that their sealed bid offer would be accepted. They reluctantly elected to comply with the pre-qualification process.

In order to provide our client with enough detailed information so that they could make a prudent business decision, my partner and I used the ATTACK™ Management Support System, developed over the last two and one-half years, to inventory and analyze

the Bright Banc portfolio. We had assembled detailed information on the entire REO portfolio over the last three and one-half years (some of my partner's clients attempted to acquire large portions of the entire portfolio). Throughout the bid process we maintained more detailed information on the majority of the assets, than that provided by the RTC and we were able to estimate the present value of the portfolio using various disposition assumptions. Without this information our client would have been unable to make an informed bid.

When we reviewed the final bid list of assets, we noticed that several assets that our client was interested in were not included. Having expressed our interest in these assets, we learned that the RTC did not have enough data on those assets to include them in the bid package. We were told that if we wanted them included we would have to supply the RTC with enough detailed information that other potential purchasers could make an informed decision on determining their value. We reluctantly complied with the request because the alternative was having to refrain from bidding on those assets since they would not have been included. As an additional point of information that will exemplify the quality of information that we maintained on the REO portfolio, we were requested to supply the title company with a list of the participation loans and the individual participants because many of the files that were transferred from Bright Realty Corporation when the asset management contracts were awarded had been misplaced.

During the forty-five days that the bid procedure was being approved, the REO portfolio and financing terms changed numerous times. During the later stages, all of the truck terminals that were under net leases were removed from the offering while the

loan-to-value ratio was reduced from eighty-five percent to sixty-five percent. The removal of the terminals had the impact of changing the net operating income of the entire portfolio from a surplus to a deficit of almost $800,000. Therefore, any potential bidder had to be prepared to carry the negative operating expenses for the portfolio in addition to recapturing the opportunity cost of their equity, plus the interest or carrying charges for the financing supplied by the RTC.

The bid specifications that were delivered to each of the pre-qualified bidders were not specific as to whether the bids would be returned on the pre-approved earnest money contract forms that the RTC included with the bid packages. Furthermore, there were many business and legal points that had to be negotiated on the earnest money contract to make it acceptable to our client. The RTC anticipated that the successful bidder would be able to close the entire portfolio within thirty to forty-five days of acceptance. On the time line that was mutually prepared with our client and their attorney and based on the information that we received from the title company, we anticipate that it would be a minimum of sixty days before the individual assets would ready to close and the middle to end of September before they were all completed, assuming eight individual transactions per day were closed.

After running detailed discounted cash flow analyses and reviewing the terms of the sale with our client and their attorneys, the bid was submitted to the RTC on May 24th, the sealed bid date. To date, three weeks after our bid was submitted, we have not received an acknowledgement as to whether the bid was accepted or not, only that an independent contractor had been engaged to review the bids because several contained

very complex financing provisions. The contractor was to determine which offers, if any, were acceptable and then make a recommendation as to which one of the acceptable offers was the final and best offer.

In a telephone conversation with the RTC on June 11th, the RTC said that they were anticipating the report from the contractor late that afternoon or on the 12th of June. After it was received, it had to be reviewed locally in the Southwestern Regional Office as well as the national headquarters here in Washington. Our client was disturbed by the conversation because it was their understanding that the contractor, analyzing the bids, contacted several bidders to verify their financing assumptions, but no one had contacted them as of June 12th. It is almost impossible to complete a present value of our bid without a payment schedule containing the assumptions used.

Our client has indicated that if their offer is not accepted, that they will not participate in an extension of the sale if the RTC attempts to negotiate with several of the purchasers as they have on other sealed bids. They have wanted to withdraw on numerous occasions because of the "all consuming level of bureaucracy" required in the approval process. Additionally, they have indicated that they do not feel that it is an inept staff at the Southwest Regional Office of RTC that has precipitated the stagnation of the sales process. To date they have been highly complimentary of Barbara Ballentine and the Southwest Regional Sales Center. They empathize with the untenable situation she and other members of the RTC have been faced with. Our clients are use to dealing with financial institutions, individuals and corporations that can close a negotiated sale in a reasonable period of time, not nine months.

SUMMARY - BULK SALES MULTIPLE ASSET TYPES

In my estimation a negotiated sale for the entire portfolio, including the loans and BRC, would have resulted in a higher sales price than splitting the REO out for a separate bulk sale. The bulk sale process would have been more efficient had the RTC had the capability of consolidating all of the files on the individual assets. Many of the files were erroneously misplaced when they were transferred from Bright Realty Corporation to the asset managers. I am not trying to implicate a particular party as being responsible, only stating that this step could have been eliminated through full automation of the asset information just as we had to do, utilizing our own ATTACK™ Management Support System. Additionally, if the bulk sale process had coordinated efforts of the RTC Sales Center and the Contracting Office, the asset managers and potential purchasers of individual assets would have been adequately informed of the actual status of the property rather than receiving no communication regarding the status of offers for individual portions of the portfolio, which were frozen, when the bulk sale procedure was approved. Finally, maintaining the confidentiality of purchasers is a necessity to attract investors with large capital pools. The disclosure of price is as much an issue as the requirement for anonymity. A six month delay on the release of sales price information would be considered reasonable, but the majority of the individuals that I have spoken with do not want their identity disclosed.

PROBLEM	SOLUTION
(1) Consolidation and automation of files to provide the purchaser with enough detailed information to make a prudent business decision	Conversion of existing electronic and physical data into a standardized reporting format
(2) Document retrieval for review in the due diligence process	Scanned imagery, accessible for any PC, would eliminate the potential loss of original documents and files
(3) Confidentiality of the purchaser	Six month delay between the time the bid is closed and the time that bid prices are disclosed

III. MARKETING & MANAGEMENT AUTOMATION

The most important thing that I have learned from dealing with the Resolution Trust Corporation and financial institutions in general is the fact existing management information systems are typically accounting based or driven, inadequate or for the most part designed on obsolete technology. Some of the problem areas identified with inventorying, tracking, evaluating, managing, marketing, and disposing of assets from a technical standpoint are:

PROBLEM	SOLUTION	ISSUES
1. Accurate inventory of assets has been poor with the majority of banks and thrifts **Smaller institutions typically are not automated which lengthens the collection process**	**Automation or consolidation of existing electronic and written data**	**Many computer systems are not capable of consolidating different operating environments on a standard reporting format**
2. Integrity of data is poor in many instances because the data may be handled multiple times before it is computerized	**Data input can be controlled through point of entry data collection (entering the data from the point of origination)**	**Compatibility of operating environments and collection systems**
3. Data retrieval is extremely slow on most mainframes systems and relationship databases because of the existing complex user interfaces **Manual systems are time consuming and repetitive**	**Use of predetermined query format to eliminate the need for software interface allows the user to generate the information desired without assistance of the data processing group**	**Limited number of systems that have the capacity to provide user friendly interface**

PROBLEM	SOLUTION	ISSUES
4. Document retrieval is almost impossible at most institutions because very little has been converted using scanned-in imagery	Scanned in documents eliminates the need to pass files physically from one location to another as well as reducing the risk of loss of important documents	Cost has been an issue in the past along with the conversion rate of the documents scanned New technology has greatly reduced the cost and increased the management of image files or OCR converted text files
5. Tracking: (a) Management (b) Marketing (c) Appraisal (d) Contractual services (e) Legal (f) Authorizations (g) Loans (h) Bonds is almost impossible because current systems are created in spreadsheet file format which limits flexibility of use or relational databases that have limited capacity in text fields.	Most systems, especially southwest plan thrifts that were a roll-up of several institutions need to consolidate reporting into a compatible user friendly environment. New technology allows the user to share, organize and distribute information on individual assets or groups of assets. Accessibility can be open or highly restricted based on the desired security level	Conversion of mainframe technology to PC Lan based technology is a major adjustment for many institutions and governmental agencies, however, at issue is the distribution and dissemination of information in the fastest, most useful media possible
6. Reporting formats have not been standardized, many employees will select the software that they are most familiar with to complete reporting requirements	A useful media format that encourages daily reinforcement in a non-threatening environment is required	Convincing people that computer systems designed for the user with the most advanced technology available in the marketplace are currently available

PROBLEM	SOLUTION	ISSUES
7. Response time can be from thirty minutes to thirty days for current computer systems and generally is dependent upon assistance from the data processing group	Create an environment that allows an individual without advanced computer training to generate reports	Lan technology versus mainframe technology
8. Consolidation of reporting from conservatorships or receiverships hampers the management and marketing of assets after they are placed under governmental approval	Conversion of data onto a standardized format, recognized by the marketplace	Implementation at an early stage to present damage or loss of information
9. Most institutions lack the base of knowledge to consolidate marketing information	Consolidate and automate the base of knowledge for use with marketing and management oversight	Determining the cost benefits of conversion and implementation

One of the primary problems that arises at an institution is how to prevent the loss of the knowledge base, the experience of the market, that is gathered from the local market through appraisers, brokers, developers, contractors, and other ancillary real estate practitioners and service groups. For an institution to benefit, it needs to secure this information for utilization by others. With the revolving door that many institutions and

government agencies have, the desire to build a computer-based knowledge base encompassing new technological advances should be overwhelming. In other words, a system designed around the practitioner rather than the technician.

My own firm learned this first hand when we were developing the ATTACK™ Management Support System as an asset tracking system based on a 1990's technology introduced by Lotus Development Corporation. It took technology almost three years to advance far enough to be capable of handling the demands that most financial officers indicated they encountered daily. For instance, Lotus Notes, released in 1989, is a Lan based group communications program that many of its users say has improved the way people within their organizations work together. In the year and a half since it was first released, Lotus Notes has been adopted by a large number of organizations including many financial institutions and government agencies.

Implementation of this type of technology enables organizations to boost the return on their investment in network technology, by letting users throughout the organization -- whether they are in the same building or at remote locations - share critical information. It allows users to work collectively on projects, track vital corporate information, and collect, organize and distribute information in the form of words, numerical data, photographs, and images, including documents which are of primary importance to institutions.

It is precisely this type of information and distribution technology that must be implemented in the marketplace. Having spent twenty years in the real estate profession, I have had the opportunity to deal with problem loans and REO, and encountered first

hand the problems with marketing and management, from both an internal and external standpoint. During the last three years, we assembled data and studied the problem in great detail in order to identify procedures that would streamline the process of collecting, disseminating and monitoring information so that prospective purchasers could evaluate what assets were worth and make an informed decision regarding the acquisition of the asset. Additionally, this information must be available to financial institutions that are interested in acquiring deposit bases and or other related assets of failed institutions. The collateral value of most loans fluctuates almost daily in today's real estate markets, making up to the minute valuations a necessity not a luxury.

In several instances, I have encountered situations with the RTC where a prospective purchaser was told that they would have to wait for two weeks to a month to get information that could be laser printed in a matter of minutes with the proper technology.

In the last two months, I have had the opportunity to meet with RTC representatives from various its offices (national, regional and consolidated field offices), the FDIC's Division of Liquidation, Division of Accounting and Computer Services, and Financial Assistance Branch, as well as the General Accounting Office, the General Services Administration, the Department of Housing and Urban Development, and numerous banks and thrifts. The purpose of these meetings was to attempt to identify the major problem areas restricting the dissemination of information on individual and portfolios of assets. Almost without reservation, I could identify the main problem as the lack of or limitations of existing communication systems.

While interviewing managers for REO departments we learned that most are faced

with a three hour to thirty day delay in generating information on assets because they do not have the knowledge of computers required to assemble the data themselves. It was impossible for management to determine adequate marketing or disposition strategies when they don't have the capacity or the knowledge base to identify problem loans in advance of becoming REO. While I was writing this testimony, I was reminded of a comment that a well known executive of a major money center bank made to me a year ago in New York, "Texas will be a mere case study for what is about to happen in New York and New England". After seeing the condition of REO or special asset divisions of banks and thrifts in greater detail, only now can I fully appreciate the comment.

Based on visits that I have made to several New England institutions, most lack sufficient information systems to manage their portfolios adequately. In one particular case, we visited a $5 billion bank, described as a typical New England bank, which had over $400 million of special assets that were managed with the assistance of three PCs. Most of the reports were generated out of separate spreadsheet files which eliminated the flexibility required to determine the overall management, marketing and pricing strategies of the portfolio.

To the best of my recollection, I recall reading a report compiled by the General Accounting Office that indicated over eighty-eight percent (88%) of all bank failures have been the result of poor management, not economic conditions. Management for banks is typically rated by the examiners in a CAMEL (Capital, Asset, Management, Earning, and Liquidity) rating. At some point the government is going to have to reconsider forbearance, or whatever the new, more acceptable term created will be. Institutions

should be required to demonstrate beyond a shadow of a doubt that they have the management tools and capacity necessary to predict the present value of their REO and loan portfolios at a given instance. This can only be done with new technology and through the support of senior level management. However, this may be the biggest obstacle in today's financial crisis.

To illustrate, I met with a national bank, over $500 million in assets, last week to try to assist them with their REO department. The institution had just been examined by the Office of the Comptroller of the Currency which made a requirement requesting quarterly monitoring of operating statements for any loans collateralized by improved real estate. The purpose was to monitor changes in the original risk or credit analyses that were performed when the loans were originated. After explaining that the department should be automated in order to capture the knowledge base, the vice president that I was speaking with, indicated that the bank's senior management viewed computers as a convenience, not a necessity. I will not be surprised when this institution shows up on the troubled list because they simply lack the tools necessary to monitor their portfolio. This has been more the rule than the exception.

SUMMARY - MARKETING & MANAGEMENT AUTOMATION

An information system designed to handle the tracking, managing and reporting functions of both REO and loans while providing multiple user access to all of the data that is relevant to a real estate asset or loan throughout the "Life Cycle of the Asset"- is one of the major components to solving our country's present financial crisis. Without adequately designed systems, financial institutions and government regulatory agencies

will continue to be unable to capture all of the relevant data necessary to be able to analyze, monitor, market and sell assets. These systems will have to provide the necessary capability to encompass information collected during loan and credit underwriting through final funding, performance, classification, foreclosure and final disposition of the asset. The information must be in a non-technical environment, that previous to now, has been almost impossible to access and generate. When management utilizes these types of systems they should be given special consideration, as a well managed institution, that might qualify them for some new type to conditional capital forbearance.

PROBLEM	SOLUTION
1. Lack of a computer-based knowledge base	Record, consolidate and collect information from knowledgeable resources to be shared, organized and distributed
2. Lack of ability to track: (a) Management (b) Marketing (c) Appraisal (d) Contractual services (e) Legal (f) Authorizations (g) Loans (h) Bonds and other ancillary services.	Implementation of information collection and communication technology
3. Refusal to recognize new technology as a viable management alternative	Educating management of the benefits that new techological advances can provide

GENERAL SUMMARY

The solution to our country's existing financial crisis lies in identifying the mistakes or misdirection taken in the past. We must not allow history to repeat itself or perpetuate existing conditions. Therefore, it is of critical importance that we understand and recognize the significance of implementing new communication and information technologies. This is what America is best recognized for, identifying problems, creating solutions and implementing change.

I am very appreciative of the opportunity to submit my views and opinions to this distinguished committee. It is my hope that the RTC will accept these comments and criticism constructively, because a management team that cannot recognize its existing problems is one doomed to distinction. I would be happy to clarify any of my comments or visit with anyone that is interested in specific parts of my testimony.

Senator DIXON. Thanks, Mr. McCrocklin.
Mr. Barru.

OPENING STATEMENT OF PAUL BARRU FOR NATIONAL ASSOCIATION OF HOMEBUILDERS, LITTLETON, CO

Mr. BARRU. Thank you, Senator, for the opportunity to be here today.

Senator DIXON. Thank you for coming.

Mr. BARRU. I am a homebuilder, land developer and an active potential RTC customer in the metropolitan Denver, CO, area.

And I'd like to concentrate on two subjects in my oral testimony:

The size and scope of the real estate disposition problem and the lack of clarity between rapid disposition of assets for cash, and maximizing recovery value.

Both terms are used in the FIRREA legislation as part of the mandate for RTC.

When the FIRREA legislation was going through, our association analyzed what was then the largest real estate disposition problem that had ever occurred in the United States, the EPIC defaults.

The EPIC collapse occurred in August 1985, involved Fannie Mae, Freddie Mac, and several dozen financial institutions, represented 357 limited partnerships, holding 17,689 residential units, involving 6,000 partners, and $1.4 billion worth of loan portfolio.

Because it was a private sector collapse, one of the leading private sector experts in asset disposition was hired to run that operation. He ran it for 9 months, could not get it organized, and was replaced by a former executive vice president of Fannie Mae for operations Stuart McFarland who was a management expert, and not a real estate disposition expert.

The first thing that he found was nobody knew what the properties were.

Senator DIXON. Now could I interrupt you at that point?

Because I'm very interested in this.

What kind of properties were these?

I've heard all you've said so far.

Mr. BARRU. They were residential properties.

Senator DIXON. How many?

Mr. BARRU. 17,689.

Senator DIXON. 17,689 residential properties, all over the country?

Mr. BARRU. All over the country but 81 percent was concentrated in the top five States which contrasts with RTC's assets, 73.6 percent being in the five top States.

Senator DIXON. What five, if you don't mind saying.

Mr. BARRU. The four in the RTC area, Texas, Arizona, Colorado, and Louisiana. The five for EPIC were Texas, California, Arizona, Florida, and——

Senator DIXON. But basically southern and southwestern States?

Mr. BARRU. Yes, the same basic kind of problem that we're facing with the RTC.

Now because it was a private sector management effort, the first thing they did was to figure out what they owned, and they went out to the marketplace and got a bid for a computerized manage-

ment control system that was going to cost them $7.5 million and take 5 years to set up.

McFarland decided that wasn't realistic the issue and he got some whiz kids on staff who got him up and running in 11 months for $1 million.

Now, he's not a disposition expert, he's a management operational expert.

They set a 5-year disposition plan because their primary objective was maximizing the return on portfolio. They phased the disposition of properties. They were facing all the RTC problems, like the 20-percent devaluation of commercial properties because of the Tax Act, the overconcentration in bad real estate markets, all of the same issues.

They accomplished their task in 4.5 years at 90 percent of appraised value, and some were close to 65 percent of the value of the portfolio of the loans that had gone bad.

We mentioned both to Mr. Seidman and Senate Banking staff at the time FIRREA was being passed, that this was the perfect model for the problem at hand.

Senator DIXON. Lord, can we get those guys to handle the RTC? This sounds like our answer.

Mr. BARRU. Well, nobody seemed willing to talk to the people in question.

We mentioned them to the congressional banking staff, both the Senate and the House side.

The only reason I make this analogy is that part of the problem seems to be focusing on the need for disposition experts.

The private contractors are the disposition experts.

The problem is an organizational problem, it is a problem of management, it is a problem of not really having all the tools to do the job.

And it is, the second part of my issue, the lack of clarity between the goals.

This program—EPIC—5-year disposition program, a staged putting of product on the market, and understanding of the capacity of the market to absorb product.

They did not just come in and say, we need cash, we need it in a hurry.

RTC is under a very interesting mandate, and when you work with their staff, they'll tell you: we're paranoid.

We don't know whether to dump property to get cash immediately, or to try to maximize our return.

And as a result, a lot of properties that are market ready but of very small value are not being brought to market, because they're not going to realize a lot of cash.

They're not going to put big numbers on the statistics that everybody is looking at, and as a result of that, they're focusing on illiquid assets that are large in size that will make a big dent in the dollar value of their portfolio.

Now let me give you a contrast.

This was a $1.4 billion bail out.

RTC has $160 billion portfolio, and not only that, it—RTC—is a rolling crap game.

Every time they get rid of one set of assets, a new set of assets comes in the back door, in just as confused condition as the original ones they just sold.

EPIC didn't have to deal with that.

I guess what I'm saying is you can judge the management of RTC very harshly and give them D or F for marks.

The fact of the matter is, they have an unprecedented task of scope and complexity that no one else has ever faced in this country.

And what they really need is some help in unifying their objectives and giving them a board who understands their management objectives and will set policies to help them implement their management objectives, instead of being torn between two boards, neither of which really understand the process that they are involved in.

Thank you very much for the opportunity, and I'll be glad to answer questions.

[Prepared statement of Paul Barru follows:]

STATEMENT

of

THE NATIONAL ASSOCIATION OF HOME BUILDERS

before the

SUBCOMMITTEE ON CONSUMER AND REGULATORY AFFAIRS

of the

SENATE COMMITTEE ON BANKING, HOUSING AND URBAN AFFAIRS

on

THE RESOLUTION TRUST CORPORATION

June 19, 1991

INTRODUCTION

Mr. Chairman and members of the Subcommittee, I am Paul Barru, and I am a builder from Littleton, Colorado. I currently serve as Chairman of the Standing Committee on Mortgage Finance of the National Association of Home Builders (NAHB). In that capacity, I have had extensive exposure to the workings of the Resolution Trust Corporation, as well as through my personal business dealings. I certainly do not have to point out to this Subcommittee what a prominent role the RTC has come to play throughout my State of Colorado.

The National Association of Home Builders is pleased that your Subcommittee has called this hearing to examine the RTC's performance to date and to explore possible ways in which that performance might be improved in the future. On behalf of its 153,000 member firms, NAHB welcomes this opportunity to share with you our observations on these matters.

OVERVIEW

Clearly, the RTC faces a massive and difficult task. In the 22 months since it was created, the Corporation has assumed responsibility for the disposition of over $300 billion in thrift assets, and estimates are that an additional $100 billion of assets will come its way before the end of this year. Over $20 billion of RTC's assets have been real estate. Eighteen months after its creation, RTC has disposed of $163 billion in assets, including $4.4 billion in real estate assets (27% of its real estate assets).

During the debate on the Financial Institutions Reform, Recovery and Enforcement Act (FIRREA), concerns were raised about the ability of the RTC to dispose of large amounts of properties. At that time, NAHB emphasized that dealing with real estate assets would require special concentration and focus by the agency. The Congress agreed, and the final law requires the RTC to maintain a department dealing specifically with real estate assets--now designated as the Assets and Real Estate Management Division (ARMED).

The real estate assets which RTC must dispose of take several forms: (1) performing real estate loans that are outstanding--and often in mid-funding--at the time of an institution's takeover; (2) troubled or nonperforming real estate loans; and (3) foreclosed properties. It is this last group of properties, rather than loans, that I want to address in my testimony today.

Few would disagree that the results of RTC's real estate disposition efforts to date have been disappointing. But few would also disagree that the task of disposing of more than $20 billion in real estate is a daunting one at best, especially given the circumstances under which this task was imposed. Many of the problems that the RTC has faced in disposing of properties are beyond its control. Huge amounts of real estate assets are concentrated in areas with continuing weaknesses in their real property markets, where values are depressed and lenders are reluctant to finance real estate acquisitions. Changes in tax laws have further reduced the attractiveness of real estate investments. Expediency and cash needs have understandably focused disposition energies on selling the more liquid and more desirable financial assets of institutions. And, in the wake of the thrift fiasco, potential purchasers, especially banks and their regulators, are skeptical of the quality of any real estate assets that once belonged to failed thrifts.

Nevertheless, several internal factors have also created problems for the RTC's asset disposition efforts, directly stemming from the agency's operations and

organizational structure and policies. For example, the RTC must take direction from two boards--the Oversight Board and its own board. Pressure to staff up quickly often led the RTC to hire people who were already working in various capacities for failed institutions and who were not suited to managing and disposing of real estate assets. As a result, personnel assignments have often been confused and chaotic, resulting in frequent turnover, particularly at the institutional and local levels where prospective purchasers meet directly with the agency. Communications among the various levels within the agency have not always been well defined. RTC's efforts to transfer assets to private-sector control can sometime result in contractors receiving more assets than they can process in reasonable amounts of time. RTC requirements for the listing of properties with brokers in real estate transactions may also be contributing to the slow disposition of some assets that may be ready for market now.

THE CURRENT SITUATION

The RTC has gone through a difficult start-up phase. External factors have significantly complicated the start up and organization of the RTC's activities. For example, documentation and files on the properties are often incomplete or inaccurate when RTC receives them. Further, the RTC has had to deal with almost as many different computer and information systems as there have been thrifts taken over by the agency. Securing the vast numbers of qualified personnel and contractors to manage the properties and negotiate transactions has also been a formidable task. This is an ongoing problem that will continue until the scope of RTC's work is finally reduced.

The RTC has made significant operational and policy improvements in many areas. The quality of the staff in the field is clearly improving, as is their accessibility at the regional and local levels. The quality of information on properties for sale has improved considerably, while the methods for providing this information are more efficient and more accessible to interested parties. Sales policies have been refined and made more reasonable under existing circumstances, and the RTC's seller financing policies have evolved to better fit the realities of some elements of the marketplace. We also believe that the RTC's Ombudsman staff has proved helpful and effective in cutting through red tape and in getting decisions made.

I am pleased to say that throughout this process NAHB has been able to establish an excellent working relationship with the RTC's leadership and its real estate asset disposition staff. We have found them to be very responsive and accessible in dealing with problems and in pursuing suggestions and recommendations.

The agency has solicited the industry's comments and welcomed its input. In our opinion, the RTC has dealt responsibly with the challenges of trying to operate in the realities of the marketplace today. With many of the start-up problems now behind it, the RTC should now be able to focus less on administrative and operational needs and turn the bulk of its attention to asset disposition.

SUGGESTIONS FOR FURTHER IMPROVEMENTS

NAHB believes that further changes are needed to move real estate assets at a better pace. First, existing policies must be more effectively communicated to all levels of the organization and properly implemented. Contractors and local representatives need to operate and coordinate as a member of a larger team. Second, the function of the Ombudsman should be reinforced and expanded. Third, new policies should be developed.

1. Implementation of Existing Policies

We believe that many of the policies that have been developed and are now in effect are appropriate and workable. However, problems have arisen when the policies have not been implemented as intended. We have found that implementation and effectiveness of several RTC policies have been inconsistent and vary dramatically from region to region. The following are examples of such policies:

Response to Purchase Offers. RTC directives require that legitimate offers to purchase real estate be responded to in writing within 30 days, a practice that should facilitate negotiations for sales. In theory, that response should be a "yes," a "no," or a counteroffer, but in practice it has often been merely an acknowledgment that the offer has been received. Such a response clearly circumvents the intent and purpose of the 30-day response policy.

In many cases, a timely response is essential not only to facilitate a sale, but to preserve the value of the property in question. A property's attractiveness is often dependent upon such time-sensitive factors as utility approvals, building permits or lease agreements. The expiration of such permits or leases immediately reduces the value and marketability of the property, thereby reducing RTC's recovery. Prospective buyers also often lose outside financing for their purchase when a decision on the sale cannot be made before the funding commitment expires.

The 30-day response policy should be effective in preventing these types of problems, but it does not appear to be consistently followed in the field. In one region, for example, the policy has been taken very seriously and, in fact, the regional director requires staff to respond to offers within ten days rather than thirty. In another region, however, prospective buyers commonly have not received any written response long after the thirty days have passed.

Seller Financing. Despite the RTC's stated commitment to seller financing, the pressure for cash sales still seems to dominate the agency's disposition activities. Clearly the RTC does need cash to support its other resolution activities and asset sales are an important source for that cash. Cash sales are easier and more desirable because they obviate the need for credit analysis of the buyer and relieve the RTC of any ongoing interest in the property. In our experience, this insistence on "cashing out" is an outgrowth of the Federal Deposit Insurance Corporation's (FDIC) traditional short-term liquidation philosophy, which does not necessarily provide the best means of dealing with RTC's massive disposition responsibilities. All too often the pressure for cash sales reduces the amounts the RTC can recover on an asset by rejecting innovative disposition methods that would protect or even enhance the property's value and produce a higher net present value. The ability of the RTC to sell assets is in many areas severely hampered by the lack of outside financing sources for the sales, particularly since its troubled real estate tends to be located where the lenders are troubled as well.

The RTC has developed what should be a workable policy on seller financing. Of the $7 billion authorized for this purpose, however, only about $100 million has actually been used to finance sales of real estate and other illiquid assets. The low use of this seller financing undoubtedly reflects start-up lags in the program, but there also is evidence that RTC personnel are either not offering financing or are refusing offers that request RTC financing. Again, NAHB has reason to believe that RTC field personnel are reluctant to implement the seller financing policies, even if doing so would be in the best interests of the RTC. We also believe that the aggressiveness with which this policy is implemented probably varies significantly from region to region.

Coordination and Consolidation of Sales Activities. The RTC has been plagued by the fact that real estate assets belonging to institutions being managed by RTC are often not located in the same area--be it state or RTC region--as the S&L holding those assets. Consequently, someone trying to buy a property in California often has to deal with the RTC in Atlanta. To further complicate

matters, thrifts in conservatorship still directly manage the sale of their assets while the RTC itself controls assets that have been taken into receivership. As a result, some purchasers have had to deal separately with multiple institutions in order to obtain adjacent parcels or lots within the same subdivision. In one case, local RTC personnel were working with a builder to put together a package of properties when two of the properties were sold separately and independently by the two thrifts that owned them. Neither thrift was aware of the offer and transaction already underway.

We know that the RTC is aware of these problems and has been working to restructure its asset management so that properties can be handled by the regions in which they are located. At the same time, while computerization of the inventory allows everyone to know what entity controls an asset, this system also needs to show when offers have been made on properties. At the field level, the RTC needs to ensure that offers are effectively communicated and coordinated between conservatorships and RTC offices.

As these examples show, direction for decision-making in the field must be clear and unambiguous. An organization the size of the RTC, with properties nationwide and personnel-intensive activities, must operate efficiently through a decentralized system or it will not be able to function at all. Field personnel must be directed to implement RTC policies as they were intended and must receive a strong message from Washington and the regional directors to this effect. The bureaucracy of the RTC must not be such that it is easier for field personnel not to act. Rather, field personnel should be made responsible for aggressively ensuring that policies are complied with. It is our understanding that the RTC's Inspector General is beginning an audit of asset sales in order to ensure that field actions conform to the agency's policies. NAHB believes that this should prove an appropriate and effective mechanism for the RTC to assess performance in the field.

2. Expansion of the RTC Ombudsman Function

The RTC has an Office of the Ombudsman, the staff of which has proven very helpful in addressing and resolving problems of persons trying to work with the RTC. NAHB has referred a number of individual cases to the Ombudsman, especially cases in which timeliness is critical to the success of the transaction or where a bona fide offer is receiving no response. NAHB also relies on the Ombudsman staff to assist members whose performing loans have been caught up in a thrift failure and are jeopardized. It is certainly our hope and belief that the actions of the Ombudsman

have prevented creditworthy loans from becoming foreclosed properties that would have to be added to the RTC's already burgeoning portfolio. We cannot overly emphasize the need for RTC's Ombudsman staff. We believe it performs a critical check-and-balance and coordination role for the RTC's field activities, and that expansion of the Ombudsman's office would be a very cost-effective step for the agency to take. In addition, it would be helpful for each region to have its own representative in the Ombudsman's office.

3. Policy Changes

NAHB believes that further refinements and options need to be incorporated into the RTC's seller financing policy. We note with approval that RTC has now used participating mortgages with residual participation in sales proceeds in order to facilitate the sale of commercial properties. The use of cash flow mortgages is also a major step forward in commercial property disposition efforts. Nevertheless, the RTC's financing policies are aimed at moving illiquid and difficult-to-sell assets, a substantial portion of which is undeveloped or partially developed land. Even with its willingness to finance sales of land, the RTC has found it difficult to attract purchasers. This is because land, unlike office buildings, has no means of producing income until some further action is taken by which value is created. Quite simply, the RTC's seller financing does not help move land assets unless development is possible and financing is available.

NAHB has discussed these problems with the RTC, and has worked with the agency to resolve them. First, we have urged the RTC to proceed with a policy for selling options on land, during which time the prospective purchaser could obtain the zoning and permits necessary for development to take place. Second, we have been assisting the RTC in developing a program that would encourage private lenders to provide loans for the development of land sold by the RTC. In this effort, as in others, NAHB has found the RTC to be responsive and responsible in trying to develop solutions to the problems it has encountered.

RESTRUCTURING THE RESOLUTION TRUST CORPORATION'S BOARD

There has been a growing debate over whether or not the Oversight Board should be abolished. The dual-board structure under which RTC operates has not worked as smoothly or as efficiently as has been hoped. It should be borne in mind, however, that the RTC's board is in fact the FDIC's board because the FDIC is the exclusive

manager of the RTC under FIRREA. The Oversight Board thus serves as the policy-making authority for the new agency, providing a non-FDIC perspective. The RTC's very function and its accountability for public funding make it a fundamentally and dramatically different entity from the FDIC. If the RTC were directed only by the FDIC's board, then its policies would most likely duplicate those of the FDIC, which would not be appropriate. Were a single board to be proposed for the RTC, then NAHB believes that any single board must be structured so that it has a significant proportion of members who are independent of the FDIC.

FEDERAL HOME LOAN BANK SYSTEM REFORM

Along with the debate over revamping the structure of the RTC and the RTC Oversight Board, there have been discussions about reorganizing the Federal Home Loan Bank (FHLB) System. The future of the FHLB System has become an issue of significant concern for housing industry groups. The System currently is experiencing declining membership as the thrift industry shrinks, along with declining earnings as demand for its traditional services--collateralized advances to member institutions--drops. If the FHLBanks are to continue to play an important role in housing finance, the Banks need to broaden their membership and customer base and to offer the types of services that can facilitate their members' lending to the housing production and residential mortgage markets.

NAHB believes that the FHLB System can serve as an important resource supporting the Nation's community-based housing lenders, including banks and thrifts. In addition, the System can support the financing that is needed to facilitate the sale of RTC properties. To do so successfully, however, the System must remain free to conduct its credit function for the housing industry independently of the credit policy considerations of other federal entities. It was for this reason that NAHB urged the establishment of the Federal Housing Finance Board as an independent agency, rather than allow the FHLBanks to come under the Department of Treasury by continuing to be affiliated with the thrift regulator, which FIRREA initially called for. NAHB continues to believe strongly that the Federal Home Loan Banks must remain independent and separate from other non-housing federal credit systems.

In order to strengthen the FHLB System and to broaden its role in the housing finance structure of our Nation, it is imperative that Congress ensure the preservation of the System, including its independence. In addition, NAHB believes that, if the FHLB System is to fulfill its intended role in housing, then Congress should enact legislation that would expand the ways in which the FHLBanks can provide credit to

its members, such as participation interests in members' housing production loans; allow the FHLBanks to offer credit enhancements for their members' lending activities; eliminate restrictions on member collateral for loans; eliminate stock purchase inequities for nonthrift members; and expand membership to all types of lenders with a housing focus.

CONCLUSION

As this Subcommittee, and indeed the entire Congress, deliberates in the upcoming months on how the RTC's performance and structure might be improved, I hope the comments I have made verbally and in writing today will be considered in the constructive spirit in which I have made them. Thank you for giving NAHB the opportunity to be part of any RTC reform effort you may undertake in the future.

Senator DIXON. Well, we're certainly going to return to you.

I'm sorry for the interruptions but it's an interesting story of a challenge, albeit much smaller, but of similar characteristics, I would say.

And we will return to you as soon as we finish all of this, Mr. Barru, and hear more about what you think is the kind of board that ought to be.

You might be thinking about that while I talk with Ms. Lewis.

OPENING STATEMENT OF HAZEL W. LEWIS, PRESIDENT AND CEO, LEWIS & ASSOCIATES REALTORS, INC., ARLINGTON, TX

Ms. LEWIS. Mr. Chairman, I'm Hazel Washington Lewis of Lewis & Associates Realtors, Arlington, TX, specializing in residential and commercial real estate.

I hold a bachelor's degree in business administration in the areas of finance and real estate. I'm a director on the Arlington Board of Realtors, and I serve on the Planning and Zoning Commission for the city of Arlington.

Senator DIXON. Very good.

Ms. Lewis. I'm honored to have this opportunity to submit testimony to your committee.

I'll focus on the problem. There's no need to correct attributes.

RTC personnel at various offices have no knowledge of internal RTC affairs to give public direction due to development and reconstruction in our own department.

Personnel are not inclined to help you search out data if it's not in their department.

I spent 2 hours with a customer trying to access the sealed bid process on a single family dwelling.

We called the phone number given and went through a chain of: you need to call a different number; no one is available; I'm not sure who is handling that; and so on.

I can't sell what's sold, nor can I sell what's not made available to me.

By the time I or the consumer get an updated list from RTC, the available properties have dramatically changed.

If the list is, for the most part, outdated, I would call it a "ripoff." Wouldn't you?

As a broker registered with RTC, I should have at least been forwarded the notice of the bid program. My notice of receipt of this bid offering came in after the inspection deadline, the notice and receipt of the offering.

One broker called 2 to 3 weeks to get the property data, only to find out the day before the deadline that the property in question was on the next day's closing bid list.

He had 10 years' experience.

When the experts at ascertaining property data have such a hard time, the consumer along with RTC is like the blind leading the blind.

If the offered price was not reasonable in the mind of the RTC, no response was given.

One customer found out while awaiting a response to her offer that, subsequent to her offer, another offer came in and was accept-

ed. That was not fair to the consumer awaiting response, wasting time and missing other opportunities.

In some instances with reasonable offers, the time line has been 1 to 2 weeks for a response.

In that timeframe, qualifying interest rates change, buyers lose interest, and some take it as a personal affront.

Minorities in that situation tend to feel they are being personally discriminated against.

While on the subject of discrimination, let me note the very group targeted by the Affordable Housing program is being excluded often by unrealistic amounts of annual income.

Who buying for occupancy property less than $15,000 can close in 30 days without loan contingencies?

Investors are coming in just above the income criteria to take the properties without being hindered by Affordable Housing guidelines. These properties are taken off the market 6 months to go into the program and ultimately exclude those who were targeted.

One prospective purchaser waited 2 months to get a response because they wanted to incorporate HUD's 203K Rehab Program.

Where loan processing, closing and funding a loan is concerned, in any given market area, there are certain time lines germane to its locale. When those times are not closely met, home buyers lose deposits from existing landlords for lack of proper notice, or occupancy privileges because their unit has already been let.

The buyer who sold the home he occupied may end in dispute with their respective buyer or perhaps lose the sale because he can't move out.

It often takes several weeks to fund a closed sale. Until then, the buyer can't move and the broker doesn't get paid.

HUD tables funds and generally closes residential sales within 60 days on HUD-acquired properties. It is the same Government of the United States, so why can't RTC do the same.

Let's look at HUD and the VA as an example.

They're offering special financing on a consistent basis and a well-structured program whereby there's an opportunity for the purchaser to learn the program.

They're operating successfully and, in most instances, selling for 10 to 20 percent more than offered.

HUD and VA properties must go through a broker and advertise that way to provide the consumer with ease in their search and a readily accessible source of information.

Home buyers, as a rule, do not possess the financial savvy to independently purchase from an auction.

Furthermore, in comparison, HUD and the VA have alleviated the prohibitive downpayments.

Many minorities feel HUD and the VA properties are the only way they can purchase, partly because of the small initial investment.

They also see a very visible role by minority brokers creating a certain degree of confidence and trust where their opportunities are concerned.

Minorities purchasing economically low end properties feel intimidated and/or alienated by majority firms appearing to handle all the properties.

On another note, we have had a property as it transferred from receiver to asset manager get lost in the computer, causing a 6-week hold on payments to subcontractors for items such as well repair and mowing of a residence.

When that amount is from 1 to 5 percent of your net income, it's a tough pill to swallow.

I feel certain that was not an isolated incident.

In the same vein, hundreds of thousands of dollars are being spent to clean up RTC properties used as an unauthorized dumping ground or to pay the city wherein the property lies for mowing, because RTC personnel could not get authority in time.

Sales lost to value disputes could be resolved by new or updated appraisals.

Not enough value is being considered for a quick close with a cash offer.

Holding costs should be calculated, put into a formula and weighed against the average time on market for a like kind property.

Also, the savings of closing costs should be calculated to compare value of the offer.

One full price, all cash sale was executed in October 1990 and is still waiting to close.

Documents were not properly completed by the RTC, title signatures were not by the proper party, new reports were requested, time restrictions were not honored, and so it goes.

When RTC sells a property, it shifts all liability to the buyer, but expects market prices exemplified in this offering.

Other sellers in the market share the liability.

Just like any other aspect of business, the greater the risk, the greater the economic gain should be whether up front or the end return. This scenario too often does not apply to the RTC.

In conclusion, let me say, I hope the information I have shared is of some benefit to this committee and ultimately to those we serve.

[Prepared statement of Hazel W. Lewis follows:]

Statement of

HAZEL W. LEWIS, LTG

PRESIDENT AND CEO
LEWIS & ASSOCIATES REALTORS, INC.

Before the

SUBCOMMITTEE ON CONSUMER AND
REGULATORY AFFAIRS
of the

COMMITTEE ON BANKING, HOUSING AND URGAN AFFAIRS
of the

UNITED STATES SENATE

June 19, 1991

STATEMENT OF HAZEL W. LEWIS
PRESIDENT AND CEO
LEWIS & ASSOCIATES REALTORS, INC.
DISPOSITION OF ASSETS
BY THE RESOLUTION TRUST CORPORATION
BEFORE THE SUBCOMMITTEE ON CONSUMER AND
REGULATORY AFFAIRS OF THE SENATE
BANKING, HOUSING AND URBAN AFFAIRS

June 19, 1991

I am Hazel W. Lewis of Lewis & Associates, Realtors, Inc., 3330 Matlock Road, Suite 200, Arlington, Texas 76015, specializing in residential and commercial real estate sales, residential and commercial leasing, residential and commercial property management, land sales, new construction and mortgage placement. I hold a Bachelors degree in Business Administration, in the fields of Real Estate and Finance from the University of Texas. I am a Director of the Arlington Board of Realtors and I have served on a number of committees. I also serve on the Planning and Zoning Commission for the City of Arlington.

I am honored to have this opportunity to submit testimony to your committee on the subject of the disposition of real estate assets by the Resolution Trust Corporation. There are several areas of interest that I would like to discuss with you briefly.

RTC personnel at various offices have very little knowledge of internal RTC affairs to give public direction due to development and reconstruction in their own department. Personnel are not inclined to help you search out data if it is not in their department. I spent two hours with a customer trying to access the sealed bid process on a single family dwelling. We called the phone number given and went through a chain of, "You need to call a different number, no one is available, I am not sure who is handling that, and so on." I can't sell what's sold, nor can I sell what is not made available to me. By the time I or the consumer get an updated list from RTC, the available properties have dramatically changed. If the list is for the most part outdated I would call it "rip-off", wouldn't you?

As a Broker registered with RTC, I should have at least been forwarded notice of the bid program. One broker called two to three weeks to get property data only to find out the day before deadline that the property in question was on the next day's closing bid list. He had 10 years experience. When the experts at ascertaining property data have such a hard time, the consumer alone with RTC is like "the blind leading the blind."

The law requires me to present any offer submitted. If the offered price was not reasonable in the mind of the RTC delegate recipient, no response was given. One customer found out while awaiting a response to her offer that subsequent to her offer another offer came in and was accepted. That was not fair to the consumer awaiting response, wasting time, and missing other opportunities. In some instances with "reasonable" offers the time line has been one to two weeks for response. In that time frame qualifying interest rates change, buyers lose interest, and some take it as a personal affront. Minorities in that situation tend to feel they are being personally discriminated against.

While on the subject of discrimination let me note that the very group targeted by the Affordable Housing program is being excluded often by unrealistic amounts of annual income. Investors are coming in just above the income criteria to take the property without being hindered by Affordable Housing Guidelines. These properties are taken off the market six months to go into the program and ultimately exclude those who were targeted. One prospective purchaser waited two months to get a response because they wanted to incorporate HUD's 203K purchase-rehab program.

Where loan processing, closing and funding a loan is concerned, in any given market area there are certain time lines germane to its locale. When those times are not closely met, homebuyers lose deposits from existing landlords for lack of proper notice, or occupancy privileges because their unit has already been let. The buyer who sold the home he occupied may end in dispute with their respective buyer or perhaps lose that sale because he can't move out.

It often takes several days to a week to fund a closed sale. Until then, the buyer can't move and the broker doesn't get paid. HUD tablefunds and generally closes residential sales within 60 days, on HUD acquired properties it is the same government of the United States, so why can't RTC do the same.

Let's look at HUD and VA as an example. They are offering special financing on a consistent basis and a well structured program whereby there is an opportunity for the consumer to learn the program. They are operating successfully and in most instances selling for 10% - 20% more than offered. HUD and VA properties must go through a broker and advertise that way to provide the consumer with ease in their search and a readily accessible source of information. Homebuyers as a rule do not possess the financial savvy to independently purchase from an auction. Furthermore, in comparison, HUD and VA have alleviated prohibitive down payments.

Many minorities feel HUD and VA properties are the only way they can purchase, partly because of the small initial investment. They also see a very visible role by minority brokers creating a certain degree of confidence and trust where their opportunities are concerned. Minorities purchasing economically low end properties feel intimidated and/or alienated by majority firms appearing to handle all the properties.

On another note we have had a property as it transferred from receiver to asset manager get lost in the computer, causing a six week hold on payments to subcontractors for items such as well repair and mowing of a residence. When that amount is from one to five percent of your net income, it is a "tough pill to swallow." I feel certain that was not an isolated incident. In the same vein hundreds of thousands of dollars are being spent to clean up RTC properties used as an unauthorized dumping ground, or to pay the city wherein the property lies for mowing, because RTC personnel could not get authority in time.

Sales lost to value disputes could be resolved by new or updated appraisals. Not enough value is being considered for a quick close with a cash offer. Holding costs should be calculated, put into a formula and weighed against the average time on market for a like kind property. Also the savings of closing costs should be calculated to compare value of the offer.

One full price, all cash sale was executed in October 1990 and is still waiting to close. Documents were not properly completed by RTC, title signatures were not by the proper party, new reports were requested, time restrictions were not honored, and so it goes.

When RTC sells a property it shifts all liability to the buyer, but expects market price. Other sellers in the market share the liability. Just like any other aspect of business, the greater the risk, the greater the economic gain should be whether upfront or the end return. This scenario too often does not apply to RTC.

In conclusion let me say, I hope the information I have shared is of some benefit to this committee and ultimately to the public we serve.

Senator DIXON. Well, I thank you, Ms. Lewis.
Mr. Casey.

OPENING STATEMENT OF PATRICK CASEY, ATTORNEY, McDIVITT & CASEY

Mr. Casey. Thank you, Mr. Chairman.

Prior to 1986, I didn't know what a workout was. I thought it was a Jane Fonda exercise tape. Now it's all we do.

I would like to discuss what I perceive is the biggest problem at RTC is the value of real estate in the continuing depressing value.

One is the public perception is that RTC and the FDIC are both going to dump property, so the general public's not interested in buying. They'll wait until it dumps. The property goes down.

A lot of our clients have expressed, there'll be a change in the tax laws, and that will take away even more benefits.

That, again, will make the price go down.

Others are waiting for a change in the tax law to give some of the benefits back. So the public perception is they're not buying now.

The next thing is financing.

And Chairman Seidman was correct. The RTC should give available financing.

I'm talking about competitive recourse real deals.

The problem in Oklahoma and Texas, there is no financing, period. Cash is king. And if you have the cash, you buy it at a great discount.

There is no financing because the banks cannot make real estate loans.

HUD has cancelled the 223(f) program. Freddie Mac, Fannie Mae, they're all out of the program.

The next thing was the Tax Reform Act of 1986 is what I believe did more damage to real estate than FIRREA, anything that's happened. I think that made the largest difference.

In 1981, they changed the depreciation from 30 years to 15 years. Everybody went out to buy real estate.

They deregulated the S&L's.

They had regulation D come out.

Everybody bought real estate. There was a big buying frenzy.

Then, in 1986, they eliminated 67 years of tax laws.

I have had many deals where people have filed bankruptcy or they've given property back because they say they will not continue to feed the property when they can't even deduct their losses.

It's the only business in the world, or in this country, where you cannot deduct your losses.

I'm talking about actual losses.

Senator DIXON. Well, may I say to you, I agree with that. I'm a cosponsor with Senator Boren and some others of legislation that would correct that, and I agree 100 percent.

Your point is very well taken.

I don't understand how we can permit that law to continue in that way.

But of course, every time you do something like this, somebody says there's a revenue consequence. Well, there is, but we are in a

situation right now where what you say is unbelievably true. You actually have losses that are true dollar losses out of pocket you can't deduct.

Mr. CASEY. That's correct.

Senator DIXON. And that's an outrage.

Mr. CASEY. There are two things that bother me.

One is that they could have changed the 1986——

Senator DIXON. Although I don't say that's how we cure the RTC problem.

Mr. CASEY. No.

Senator DIXON. But I agree with your point, anyway, for what it's worth.

Mr. CASEY. But what I'm saying is, that will bring many people back into the market who will be buying. And if they knew there was going to be——

Senator DIXON. Well, it would. I agree with that. I would agree with that. You're correct.

Mr. CASEY. And the next thing is the RTC personnel, the staff.

I think that the staff has done an excellent job when you consider that 90 percent of the people in our part of the country who are qualified cannot work for the RTC. Under the RTC rules, they've either given them property back, or they've been involved, so it eliminates most of your experienced people.

You do not get good people when you're hiring them on a temporary basis with no benefits.

They have a job, then they're going to be gone.

I cannot comprehend why, since the Government is the largest owner of real estate, why they don't have one agency, such as the RTC, that takes all the property.

Not only do you have a problem dealing with four or five different offices for property in Oklahoma, then you get into, you deal with the FDIC, the RTC, HUD, and there's no consistency whatsoever between the Government agencies.

The next thing is the staff are absolutely paranoid, as several people have said before. They don't want to make a decision.

Big Brother's looking over their shoulder.

They would much rather refer it to the legal department. The legal division then refers it to the outhouse attorneys who start running the time. There's no workout done.

No one wants to make a mistake.

I've been told the reason they wouldn't do it, by an RTC employee, I'd rather have him file bankruptcy, then no one can blame me. It will be the bankruptcy judge's fault.

Another thing is a real deal. They do not comprehend you do not have experienced staff.

You can have two properties, both have a $1 million principal, one owes $600,000 interest. They only look at the principal. They don't look at what the costs are going to be. That's the lost interest, the past due property taxes, the rehab, the broker's fees, the receiver fees.

What this is doing, they just look at the one deal and that's the principal.

Another thing is a layered authority. I had a client who bought a less than $700 piece of equipment. That had to go through five

levels to get it approved, and that was about a $12 million loan, one asset.

The paper maze is totally unbelievable.

I'm in the midst of a workout now. The RTC requests each tax return for my client for the past 2 years.

That's in excess of 60 tax returns.

We also gave them the financial statement, the operating income statements, gave them a package that's a foot high. They've lost it.

I made a copy. I sent it to them again, I sent it to their outhouse attorney. Their outhouse attorney sends it to them. They now have three copies.

They lost it.

Senator DIXON. You have outhouse attorneys in——

Mr. CASEY. The outhouse attorney is basically what outhouse means.

Senator DIXON. I believe that. I do believe that.

Mr. CASEY. Most of them are outhouse attorneys. The outhouse attorneys, quite often, are even better than their in-house.

So he sends them a copy, I send a copy. They now have three. They lose it again.

I send them another copy, their outhouse attorney.

They now have five and they have lost it for the third time. They have 5 feet of documents.

They have also ordered three appraisals three different times for the same property, because they didn't know they did it.

They've also ordered two environmental surveys.

Another example would be I have a client who's managing a shopping center, and he has a small tenant there at $600 a month in a retail shopping center.

They send in the standard retail 5-page agreement.

Two months later, RTC sends back a 32-page office building lease which states they will pay the utilities, they will pay janitorial, which does not apply to retail.

My client goes back to them and says, you know, this doesn't work. We need a retail. He's told, no change.

He goes back to his tenant and the tenant says, it would take my attorney 4 hours to read it. I can't comprehend it. He couldn't understand it in 4 hours, and so he moved. You now have an empty space.

The story goes on.

The RTC has now said they're going to manage it out of the Tulsa office. That's 100 miles away, no onsite personnel.

Senator DIXON. Let me ask you this, Mr. Casey.

I hear that about the outhouse attorney.

I think this law may have been written by an outhouse attorney and I think the thing may now be run by an outhouse attorney.

Mr. CASEY. I believe——

Senator DIXON. Let me ask you this. I keep hearing this all the time. It comes up.

I mean, when you're going to buy a certain piece of property, isn't there an individual you deal with who's in charge of that certain piece of property?

Mr. CASEY. No.

Senator DIXON. Now, Ms. Lewis is saying the same thing there.

I don't understand this.

I mean, let's take the case that Mr. Barru talked about. Of course, that was 17,000-plus houses, as I understand that particular operation.

But you mean to tell me, when you go in there and you are interested in a house at a given location, you don't deal with the same person all the time about that particular house?

Mr. CASEY. No. I think Ms. Lewis is talking about single family houses.

I'm talking about——

Senator DIXON. Well, just to keep it simple, that's what I'm talking about.

But we could talk about Centrust.

I don't care about the size.

Mr. CASEY. I'm talking about it makes a big difference if its multifamily or if it's commercial, because, there, no one will make a decision.

I'm also speaking about workouts.

Where I had one deal where my client offered $2.3 million.

Senator DIXON. For what?

Mr. CASEY. For a settlement on a property.

Senator DIXON. What kind of property?

Mr. CASEY. Five apartment projects and it was 125 percent of the appraised value.

Two MAI's picked out by the Government, not ours.

Senator DIXON. Your client offered 125 percent of the appraised value of the property?

Mr. CASEY. Yes. Because he was on the debt.

Senator DIXON. Man, I hope we sold it to him.

Mr. CASEY. No, we didn't.

Senator DIXON. Well, I thought that would be what you told me.

Mr. CASEY. He took the property back and filed bankruptcy, and they sold the property for less than $700,000.

This story just goes on and on and on.

No one——

Senator DIXON. Can you give me the name of that property, the location of that?

Mr. CASEY. I can give you the names of anything, yes.

On any of these examples.

Senator DIXON. That's a property in what city?

Mr. CASEY. It's in Norman and Oklahoma City. There were five properties involved.

Senator DIXON. And your client would have paid 125 percent of appraised value?

Mr. CASEY. Yes.

Senator DIXON. And the RTC didn't sell it?

Mr. CASEY. No. It ended up in the FDIC.

We started with FSLIC, then Red River, which is a replacement, then the RTC, then it went back to the FDIC. We worked with five different Government agencies, and I think FADA had it at one time, too.

But we dealt with no less than 10 different Government employees.

Senator DIXON. Well, now let me ask that question then that's pertinent to that particular case.

Why couldn't RTC close that deal?

Mr. CASEY. Well, when the RTC—it ended up being FDIC, the RTC had it for a brief time. There was allegedly fraud with the S&L or something. I don't know why you had so many different Government agencies involved.

And Red River Federal Savings & Loan.

Senator DIXON. Is that common to find more than one agency involved in these deals?

Mr. CASEY. No, not now.

The FSLIC was turned over to FADA which was a joke, then from FADA, it went to FDIC or to RTC.

RTC and FDIC's a great improvement over FADA or FSLIC, but it's like going from 0 to 2, when you're trying to get to 100.

But I'll be happy to give you those particulars.

Senator DIXON. I think we'd like to have those, and my staff will be following up with you about that, Mr. Casey.

[Prepared statement of Patrick J. Casey follows:]

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SYLVANUS G. FELIX (1910-1976)
RICHARD F. McDIVITT
OF COUNSEL

Patrick Jon Casey Testimony: Subcommittee on Consumer and Regulatory Affairs of the Senate Banking Committee at its oversight hearing on real estate asset disposition activities of the Resolution Trust Corporation (RTC) on June 19, 1991

Public Perception: The general public believes that (1) RTC and FDIC will in the future dump real estate which will further depress the values; and (2) another tax bill will be enacted with higher rates and more changes affecting real estate. Quotes: "You can't trust Congress," "new real estate tax benefits are going to be enacted (or further stripped)," "it's too early to buy real estate."

Financing: Chairman Siedman is correct that the RTC should offer competitive financing to sell RTC assets. The credit crunch depresses the value of real estate. HUD, Freddie Mac and Fannie Mae have abandoned multi-family loans and private financing is no longer available which is inconsistent with the RTC purpose. Quotes: "Cash is King," "The rich get richer at the expense of the middle class."

Consolidation: The U.S. government is the largest real estate owner. One federal agency (e.g., RTC) should be responsible for all real estate negotiations and dispositions instead of numerous agencies (RTC, HUD, Freddie Mac, V.A., etc.). This would insure a competent full time staff and a consistent policy.

Tax Reform Act of 1986 ("TRA 86"): TRA 86 eliminated 67 years of tax law regarding real estate. TRA 86 had more impact on depressing the values of real estate than the recession, the Garn-St. Germain Act and FIRREA combined. The additional tax revenues gained from TRA 86 will not come close to the additional cost of the thrift bail out that TRA 86 created. The losses to be suffered by failed banks, life insurance companies, credit unions, pension plans, etc. must also be considered. A simple solution to eliminating the syndication of the losses (actually tax deferral) prior to 1987 would have been to make the at risk rules apply to real estate financed with nonrecourse debts (taxpayer could only deduct losses equal to the amount at risk).

RTC Staff: The present staff is commendable when one considers that only temporary employees are hired which have not been involved with a sour real estate loan. Many, if not all, qualified potential employees are eliminated by the RTC rigid rules. (Example: FDIC forced a 2 1/2 year employee to resign due to involvement as a limited partner where the general partner filed bankruptcy and property was foreclosed). There is a lack of a qualified experienced staff. The employee turnover is due to the lack of experience, lack of training, frustration and perceived work load. Staff has unrealistic expectations - 60 days to close when lender has to have appraisals and environmental surveys. The response time is horrible. Quote: (1) Buyer: "I will never deal with the RTC again period." and (2) RTC "outhouse" attorney: "RTC does not have a clue of what is going on, they actually think that all the problems were caused by crooks."

Political Discussion: Staff often makes "politically correct decisions." Big brother watching mentally, therefore, afraid to make mistakes (wrong decisions). Safer for staff to proceed with foreclosure and turn over to attorneys rather than recommend compromised settlement agreement. Safer to shift the possible blame to the attorneys or judge. Quote: "By forcing him into bankruptcy, then we know that we did not make a mistake (on the workout) and there was nothing left. We cannot look bad later, it would be the (Bankruptcy) Judge's fault."

Real Deal: Real costs (time value of money, deteriorating value of vacant real estate, attorney fees, broker fees, past due property taxes, receiver fees, deferred maintenance, etc.) are often not considered. The principal write-down is all important. Too much use of out-house subs and attorneys. The Regional Committee will often spend less than 15 minutes on the decision relating to a multi-million dollar transaction (which is an impossible task). Quote: "Fees don't bother us because we are not a for profit organization."

Layered Authority: The front line staff does not have authority to make decisions. An offer is transferred to and approved by supervisor, then manager, then local committee and then regional committee (and in larger transactions, then to Washington). Each layer further increases the time required and at each layer additional information may be requested. Example: $1,500,000 loan; equipment (less than $700 sales price) had to be processed through four layers of bureaucracy (to Regional Office) to be sold. Front-line staff needs authority to make decisions and the bureaucracy needs to be reduced. Each workout or acquisition is different - it depends on the office and the employee. There is inconsistency, what works one time will not work the second time.

Paper Maze: Too much paperwork and too little work. ("90% paperwork and 10% CYA".)

Example 1: Package (proposed settlement agreement; debtor's financial statement; project income statements and balance sheets for three years; 60 tax returns/2 years; etc.) was "lost" for third time. RTC has requested appraisal for third time.

Example 2: Revised agreed settlement agreement could not be located 30 days after mailed.

Example 3: RTC takes over shopping center. Property Management Company ("MGT") attempts to renew lease for existing tenant who wants more space. RTC sends office building lease 1/4" thick (with utilities and janitorial provided) for $300 month shopping center tenant. Tenant refuses to hire attorney to interpret lease. RTC states lease has to be signed with no changes. Tenant moves. MGT told RTC is going to manage property in Tulsa with no on-site management (100 miles from Tulsa), but does not know when.

Example 4: RTC closes thrift. Debtor attempts workout with RTC (telephones RTC and sends package April, 1990). RTC sends one page letter December, 1990 and "apologizes for the delay in attempting to arrive at a solution" and requests more information. Debtor responds next business day. Debtor sends update letter February, 1991. A year later, debtor has no resolution, is facing litigation with a partner and a divorce from wife of 25 years and is now considering Chapter 7.

Example 5: Debtor delivers cashier's checks to RTC outhouse attorney for closing the next day. RTC delivers release of mortgages 32 days later than agreed.

Example 6: Builder makes offer through broker for $6,500 residential lot on standard two page basic sales agreement. Two months later, RTC responds with a new 20 page agreement.

Example 7: RTC sold condos to low-income at auction instead of listing with brokers to sell all units as an apartment project or to individual owners. The decision was made to sell to low income regardless of the economic impact on the values of the present retired owners. The project was 90-95% built out for approximately three years.

Example 8: The term "Former Owner" was not defined in 18 page "Sale Agreement Commercial Property" and the blank was left blank. Father's substantial trust elected not to acquire property (full cash offer) because son was a limited partner in Partnership that was foreclosed several years ago and the broad language could have included trust as a "Former Owner."

The Costs: The cost of the thrift bailout has tripled in the last 29 months and is officially estimated at $150 billion (many believe it will exceed $1 trillion when banks, insurance companies, etc. are considered). This will be the subject of college text books in the future. What should be considered is the impact on thousand of families who have been financially ruined, the bankruptcies, the divorces, the suicides, etc. Also, wealth (real estate) is being transferred from the middle-class to the extremely wealthy who have cash.

Senator DIXON. Mr. Barru, you were talking about the type of supervisory board that ought to be involved in this.

And I wonder if one of the staff would be kind enough to put up Senator Wirth's——

Mr. BARRU. He's my Senator, sir.

Senator DIXON. That's right, he is, Mr. Barru.

Maybe you gave him this.

Mr. BARRU. I saw it a long time ago.

Senator DIXON. Now, Mr. Searle, an earlier witness said something I related to him about a competent executive in charge of this operation.

But what kind of a board are you talking about?

Mr. BARRU. Well, you need to draw a distinction between the boards that you have now.

FDIC is a board that regulates an insurance operation, a regulatory operation, and a very modest real estate disposition operation.

And most of those on very short-term basis, certainly not the diversity or complexity of the RTC holdings.

The second board that you have is, for all practical purposes, a political board.

They are administrative heads of large Government departments or bureaus or agencies that can only devote a small amount of their time to the issues of setting policy.

Senator DIXON. Yes, the Secretary of the Treasury and the Secretary of HUD, and so forth, yes.

Mr. BARRU. It seems to me that you need a board that understands the operation of a large real estate functioning company, not unlike the kind of board that a Fannie Mae gets, in which there are some public members, but that have also some private sector members who understand the business they're in.

Senator DIXON. Well, the only thing that concerns me about that, frankly—I hear what you're saying—and maybe the administration's bill, in the first instance, wasn't the right solution.

I think the evidence is clear that it wasn't, incidentally.

I think even people that are involved in the administration now believe they probably made a mistake. This thing is too complicated.

There are some that assert, you know, that that was done on purpose, but I don't want to share that view. I'm still hopeful we can find a solution.

But the point that Mr. Bowsher makes, the other day before us quite frankly, is look, after 2 years, this business of changing boards and boxes and other things probably doesn't help that much any more.

I'm about at the point where I accept that, Mr. Barru, to try to pass legislation to set up another board by now, even if it's a better board, I'm about convinced that by the time you pass the law and it got in effect and these folks got here and got confirmed and everybody was in place, we will have wasted a lot more money.

That's why I kind of like the idea of finding one really good person.

Now what do you say to that?

Which is to say, I understand what you're saying.

It think you're right.

The FDIC, look, Bill Seidman's a good man.

But, you know, they've got plenty to do.

And this RTC board individually those are all good people. I happen to feel that personally, and I'm not of the same political persuasion, but all are decent people.

But, I mean, it's not their job.

We've got a ship with nobody sailing it that knows what to do, in my opinion.

That's why I think, if we could get one good man or woman that really knew what they were doing inside this thing, presumably they could get the right people in and do the kind of job you talked about in that company with 17,000 homes and so forth.

I'm kind of impressed with that story.

Mr. BARRU. I think my answer to that, sir, would be that whatever person you hire for that job is going to have to have a board that gives them a clear mandate of what the primary objective of the agency or the business operation is.

Is it in fact to maximize the recoverable value, and I have a realistic timeframe, say, 5, 10, 15 years for a project of this scope, or is it to generate immediately enough cash-flow and enough sales so that we're not putting the muscle on Congress to keep coming up with the money to fund the operation.

Until the Congress determines, or a board determines that and gives that agency those kinds of clear, unambiguous signals, you are not going to be able to develop a business plan for the disposition of this property appropriately.

Senator DIXON. And may I respond by saying I hear you and I agree with that.

And as a man who has made some investments in his life time, and sometimes I won and sometimes I lost, as all of us have who have made these kinds of investments, I guess I would observe that probably most would agree, certainly in the Congress, and I think the taxpayers and the country generally that what we want to do within reasonable limitations is maximize the return on these assets.

At the same time, we'd probably like to see some cash-flow as we go along in this thing.

And I don't really believe that those two things eliminate one another necessarily. They can exist together, as a person with your business acumen would understand.

So that I think I come back to this point.

There's somebody out there that can do this.

You know what I mean when I say that to you?

I remember as an early member of the Banking Committee and a first term Senator early on, when all the debate raged in the country during the 1982 recession in the Reagan administration's first term, I used to sit here and watch Paul Volker operate behind that smoking cigar—I think he finally gave them up, he used to drive people out of the room with those cheroots that he employed that were part of his charisma, I think, the waving of the cigar and the smoke—but I'd go away really feeling a little comfortable that he probably knew what he was doing.

I don't mean to send accolades necessarily to one individual.

But I have to tell you that whether we agreed with him all the time, or not, and sometimes he said something that everybody in the country at that time was disagreeing with, really did.

For the want of an acceptable term in a room full of mixed company, he had nerve and guts. He stayed his course.

In the end, it came out all right.

Whether it was because of him or whether it was because I oftentimes suspect that it's just cyclically what's going to occur eventually.

You know, eventually real estate will be OK again, even if we don't correct, well, some of those things we still have to correct, Mr. Casey.

But the whole point I get back to is this.

It just seems to me that there's got to be some way of running this thing better.

To do what you're saying and then say that policy, come to the Congress and say to us: here's our policy, here's what we're going to do.

Mr. BARRU. I'd like to come back, Senator, and point out that Mr. Volker had one of the few jobs in the Federal establishment that, for the period of his term, has very little accountability to anybody, politically or otherwise.

He is not answerable to the President.

He is not answerable to the Congress.

By definition, the Chairman of the Federal Reserve Board is one of the most politically independent people, and therefore has a freedom to stay the course in the most unpopular of circumstances.

And Mr. Volker proved that if you have the intestinal fortitude to do it, you can stand up to any criticism and achieve an objective.

Now, are you willing to do that in a czar, if you will, which is what you're describing.

Senator DIXON. Well, let me tell you something.

That may be what this RTC needs, I'm not kidding you.

Mr. BARRU. But that's the issue.

Senator DIXON. We've got 535 quarterbacks in the Congress.

The administration can't agree about what to do.

Mr. BARRU. Right.

Senator DIXON. A witness in the first panel who obviously doesn't work for the RTC gives them A's.

Charlie Bowsher comes in here and gives them D's.

I suspect it ranges all the way from F's to A's.

I haven't heard about too many A's.

But I do really truly believe that there is no solution as we're operating this thing now.

What really bothers me a lot as a Senator and here I sit as chairman of a subcommittee is what do you do to remedy this.

I think everybody's willing to try something if we could find the solution.

Mr. BARRU. I think that you're on the right track but you need a board that will give a clear definition and then turn it over to somebody to administer it.

Senator DIXON. Well, can I interrupt you at that point about the board?

The creation of a new board, Mr. Barru, accept the statement of this Senator.

By the time you pass the bill, let's assume, for the purposes of our discussion, we would put it in the big bill.

We're going to do a big bill this year probably on banking, great big bill.

There'd be room to put this on the truck, and this Senator probably is a player and could do it.

By the time you got it done, first of all, you've got to get everybody to agree to it, and the administration to say, that's OK, and they'd sign the bill with that in it.

By the time you get that done and the board's in place, and you find the people and you confirm them in the next session of the Congress, it's this time next year.

We don't need that.

Mr. BARRU. I'm not even suggesting a new board.

It's getting the existing structures to give management clear signals on which they can rely and proceed down the course that they charted.

If they know that they can take a clear course and somebody is going to stand behind them and doesn't make a public statement one day, such as, we can't have banking loans the way we do now when they desperately need banking loans to sell raw real estate, and then back off the next day and comes to Congress and testifies a third day on a contradictory course, these guys don't know what to do.

And as a result of that, my banker won't lend me money to develop land that I want to buy for cash from RTC.

And therefore, RTC is taking the rap because they didn't sell Paul Barru a piece of land that he was willing to buy because he can't get the ancillary loan because contradictory signals are being given out all the time, so that my bankers say, we don't dare.

Senator DIXON. Yes, I hear that.

Well, Ms. Lewis and Mr. Casey and Mr. McCrocklin all commented about similar situations.

What about the financing part?

I keep hearing that all the time.

You want to go buy something.

You've got to have some financing, right?

Ms. LEWIS. True.

You know, anything else that you'd go buy on the marketplace offers financing.

You can go buy a stereo and they've got somebody to finance it.

You go buy a car, and they've got somebody to finance it.

You go buy RTC property, there's nobody to finance it.

And when you're talking about people buying residential, not major investors spending multimillions of dollars who have multimillion dollars. You're talking about people buying properties.

As an example, in this offering, if you're buying a property of less than $15,000, you have to close in 30 days, you can't have any contingencies, you have to have $1,000 down on each property you offer on.

Home buyers can't do that. It's an impossibility.

Mr. CASEY. I see mixed messages coming from Government.

Like you have apartments to get rid of. What does HUD do? They limit the 223(f) program.

And Fannie Mae gets out, along with Freddie Mac. That's 85 percent of the multifamily financing doesn't exist any more.

What I was suggesting to do on that was to take not a new organization, but to have one organization, be it RTC or whatever, handle all of the real estate.

I'm not sure you need to change RTC but maybe to get a different organization that HUD and everybody could transfer the real estate where you would have full-time experienced personnel.

Senator DIXON. Well, let me ask you this question, though.

Let me take a simple case.

Let's say in Dallas, there's a bunch of homes, I presume there are, in the possession of the RTC, OK.

And just for the purposes of this discussion, let's say they're fairly modestly priced homes, you know, $90,000.

Are there any homes like that in Dallas?

All right, now. If a person wants to buy one of those $90,000 homes, doesn't the RTC try to work with you to try to figure out a way to get some financing for that home so you can buy that $90,000 home?

Ms. LEWIS. Absolutely not.

Senator DIXON. No.

Mr. MCCROCKLIN. Senator, there's a bigger problem, and the problem is identifying the properties with enough specific data that a purchaser can make an informed decision.

I had a friend of mine that walked into the RTC office in Austin and inquired about residential properties in a particular neighborhood, and he was handed a stack of houses, I think there were about 1,000 of them included, and he was told to look through that data and come back and in 2 to 3 weeks after he supplied a list to the RTC of which assets he wanted specific data on, they would try to get that back to him.

No. 1, purchasers won't wait that long.

And No. 2, that's the same type of information that a lender has to have before they can make an informed decision.

And one of the other things that we encountered was when we did the 501(c) apartment bulk sale, we put together a package of over $50 million, which was going to be private placement. And the RTC broke that bid out and it dropped it back to I think it was $16.5 to $17 million when they pulled some of the apartment projects out.

That put us back into the position that we had to go to Fannie Mae. Fannie Mae turned around and told us that they didn't want to lend if there were 40-year deed restrictions if they had to foreclose on a property, and they imposed restrictions against us on the underwriting criteria which were not made public to anybody else.

And we spent 3½ months in that process and we're still engaged in trying to consummate that transaction.

And we've had to underwrite the loan on the current operating statements.

The current operating statements that are being submitted to prospective purchasers by RTC representatives or subcontractors

did not even disclose there was a difference between the Affordable Housing rents and those that were existing on the property.

And it makes an impact of almost $4 to 5 million on the purchase price of that bulk.

Senator DIXON. Well, the testimony I hear from all of you is so very, very depressing because it just sounds like a true Government invention.

Everything is so complicated that nobody can figure out how to buy something, even.

And that it occurs to me is a remarkable result.

It seems to me that there's got to be some way to have somebody at the top and real estate people out there that can sell these things, and simple lines of communication so you can make efforts to arrange a loan.

If a person comes in that's got a decent job, in most cases nowadays, my own experience has been the wife works too, and they both have decent jobs they want to buy a house, and you've got some kind of a modest downstroke, there ought to be some way in this world that we live in to figure out how to loan a guy the money so he can buy the house and get the asset off our books and into his private domain.

And it doesn't sound like it's working.

Yes, Mr. Barru.

Mr. BARRU. Senator, in Colorado, believe it or not, RTC is selling a lot of property.

Senator DIXON. Good.

Mr. BARRU. And they are selling it far more effectively today than they were 6 months or a year ago.

Senator DIXON. Why?

Mr. BARRU. Their staffing is improving, their information system, while not perfect, is getting better.

The fundamental problem is not with single family residential properties, nor is it with multifamily properties. It is with commercial properties and raw land.

There is absolutely no financing.

I sat down at 2:30 yesterday with a senior real estate loan officer of the largest locally owned bank holding company in the State of Colorado, and was told that even with RTC participation in some of the financing, they would not provide development money, even if I put 25 percent of the total cost of the project in cash in front of their loan.

In other words, not of the value, not of the market value, but of the cost of the land and the development because, as a matter of principle, they have two problems.

Their board is paranoid about investing in real estate even——

Senator DIXON. Which board is that?

Mr. BARRU. The board of the bank.

Senator DIXON. Oh, the board of the bank.

Mr. BARRU. Even though they recognize there is an acute shortage of developed lots and RTC is selling all the developed lots they have as fast as they come on the market.

And the second thing is that they are paranoid about the regulators coming in without objective standards.

And this goes back to your banking bill now being considered.

And being able to classify performing development loans as nonperforming because they don't like the criteria under which the loans were made.

They say, with those kind of exposures, and the capital requirements on development loans, we don't want to be in that business, so we've made it a policy as a bank, we are not going to be in that business, and that is the fact with the five largest bank holding companies in the State of Colorado.

Senator DIXON. Are you asserting to me, Mr. Barru, that if the RTC became, would finance through their own agency, self-financing, so to speak from the RTC to you, the raw land out there, that you couldn't go anywhere to borrow money to develop anyway?

Mr. BARRU. That's exactly the point.

I've got to do it with equity money and therefore, there is an almost slowing to a standstill of the sale of raw land, except in very unique circumstances in our marketplace.

And that's a major problem.

And in dollar value, the raw land and the commercial buildings and the shopping centers really represent the major portion of the RTC real estate assets.

Single family houses——

Senator DIXON. Well, but the commercial property, let's just take that for a minute.

The commercial property, you could work out a self-financing arrangement with RTC, what would the problem be there?

A Centrust, a hotel, an apartment building or something.

Mr. BARRU. Well, let me put the question to you in this way.

If I go——

Senator DIXON. No, no. That's not fair. I get to ask the questions. That's why I got this job.

Mr. BARRU. OK.

Senator DIXON. No, you go ahead.

Mr. BARRU. Let me answer your question.

If RTC sold me——

Senator DIXON. I'm an old trial lawyer. I never wanted the witness to start asking me the questions.

Mr. BARRU. If RTC sold me a shopping center on a cash-flow mortgage, and in 5 years, the economy of Colorado turned around to the point that I had a cash cow, then somebody is going to look at that cash cow and say, hey, there was a sweetheart deal made to Barru. He got something for nothing because RTC was in a hurry to sell that asset.

If they'd held it a little longer, they could have gotten a better value.

Senator DIXON. Well, I hear that but that's the challenge of this job, to make the kind of decisions that you have to make.

I hear what you're saying there, I understand that.

If they go out and sell and get rid of it at a price that later on looks like it was a sweetheart deal, then you have a problem.

On the other hand, if you hold it too long, you've got a problem.

But let me tell you, that's part of the management decisions good managers have to make, Mr. Barru.

You just told me the story of the managers that made their decisions in 17,000-plus houses. They had to make those decisions all the way up and down the line.

And there's some price at which this stuff should be sold. Now it might be a price below what it's going to be worth 3 years from now.

Let me tell you. Some of us are holding stuff right now and hoping 3 years from now it's going to be worth more. There's a lot of us in this world doing that, you know.

Mr. BARRU. Well, I still come back to the basic thing.

There's only a certain amount of the financing that RTC can provide.

There's got to be supplemental financing outside of that. The banking system has to be given a carrot. Whether it's in tax incentives, whether it's in capital requirements for the kind of loans that will facilitate disposition, it cannot be done only by RTC. They need some help on the outside in a lot of these problems.

I think the second one is a clear statement of policy that they can stay the course, following whatever program it is agreed upon that they ought to follow.

And that can be reviewed in time and should be reviewed in time, but right now, there is not that clarity.

Senator DIXON. Well, you know, let me say this, Mr. Barru, and I hear that from all of you.

I again want to make this assertion.

I made it with Charlie Bowsher and I made it today and I made it in private conversations on the floor of the Senate and other places.

If we had a man or a woman in whom we had great confidence regarding that individual's ability, the integrity of the individual, the professional background, the reputation in this country and so forth of that individual, in charge of this thing—I hear what you're saying about the Fed was a perfect thing because there we politicians couldn't mess with it much.

I understand all that.

But a person with that kind of standing in the national community with the media and other people, you know, the kind of person that really knew how to run this job and really do it.

And that person would come into this committee and say to the chairman of the whole committee, Chairman Riegle and all of us of both political persuasions.

Look, I know this job. I know how to do this. I know how to maximize our return, get the best amount of cash we can as we go along and do the best job we can. It's going to take x number of years. Let me tell you something: we can't get all our money back.

See, we all know that.

Those guys knew that when they had those 17,000-plus houses. They knew they weren't going to get all their money back, you know. They were just trying to reduce their losses, cut their losses, you remember?

That's the game.

A lot of times, if you've ever made any investments, and I've made a couple and you've made, I'm sure, hundreds, sometimes the question is, how much can you cut the loss.

That's all we're talking about here, is how do we cut the loss.

If we had some dynamite person in charge of this thing, then we'd all feel better about it.

And then a person like that would listen to people like you and Ms. Lewis and Mr. Casey and Mr McCrocklin and others, get their suggestions.

I think that would help.

Ms. LEWIS. Mr. Chairman.

Senator DIXON. Yes, Ms. Lewis.

Ms. LEWIS. Let me submit to you, and I agree with your opinion of having someone in charge, but just like at whatever Cabinet level they've got each one as they branch out from there, there are Assistant Secretaries, then there needs to be someone under him in residential separately and commercial separately and in raw land development separately.

Senator DIXON. Yes, because those are specialties.

Ms. LEWIS. Whereas the commercial is the major problem at this point, if residential is left on the back burner, it'll soon be just as equivalent of a problem.

Because when you look at the residential market, people do not even know what the Resolution Trust Corporation is.

Investors and those people in the multimillion dollar businesses know because they were involved in it as it developed.

But you get out in the street over here on Avenue H, or somewhere in Dallas, and you start asking people what's RTC, they don't know.

You can't get someone to the store if they don't know your store exists.

Senator DIXON. Well, may I respond to that, though.

I think if I was a guy running this business, I'd recognize that it pays to advertise.

I think you've got to do some things to let people know where your assets are and how they're available and things like that.

Well, I just want to say to all of you, it's been an interesting and I guess a little bit frustrating experience to be with you all this morning.

But maybe we'll cull some ideas from this.

You've been very helpful.

I appreciate very much that you would take your extremely valuable time and give some of it to your country in this way and we thank you for that very much.

This subcommittee meeting's adjourned.

[Whereupon, at 12:25 p.m., the hearing was adjourned.]

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